

In the Supreme Court of the State of Nevada

No. 85513

Electronically Filed
Feb 28 2023 04:19 AM
Elizabeth A. Brown
Clerk of Supreme Court

DUJUAN LOOPER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**Appeal from Denial of Petition for Writ of Habeas Corpus
Eighth Judicial District Court, Clark County**

APPELLANT'S APPENDIX VOLUME 1 OF 2 TO OPENING BRIEF

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Respectfully Submitted,
/s/ Diane C. Lowe
DIANE C. LOWE ESQ. Nevada Bar #14573


CLERK OF THE COURT

1 **INFM**
2 **MARY-ANNE MILLER**
3 Interim Clark County District Attorney
4 Nevada Bar #001419
5 **MICHELLE FLECK**
6 Chief Deputy District Attorney
7 Nevada Bar #10040
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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14 V. GRECO
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DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11
12 Plaintiff,
13
14 -vs-
15
16 DUJUAN DON LOOPER,
17 #1871455
18
19 Defendant.

Case No: C-12-279379-1
Dept No: VI

INFORMATION

16 STATE OF NEVADA }
17 COUNTY OF CLARK } ss.

18 MARY-ANNE MILLER, Interim District Attorney within and for the County of
19 Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the
20 Court:

21 That DUJUAN DON LOOPER, the Defendant(s) above named, having committed
22 the crime of **BATTERY CONSTITUTING DOMESTIC VIOLENCE -**
23 **STRANGULATION (Category C Felony - NRS 200.481; 200.485; 33.018)**, on or
24 between the 8th day of January, 2012 and the 9th day of January, 2012, within the County of
25 Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made
26 and provided, and against the peace and dignity of the State of Nevada, did then and there
27 wilfully, unlawfully, and feloniously use force or violence upon the person of the defendant's
28 spouse, former spouse, or any other person to whom the defendant is related by blood or

1 marriage, a person with whom the defendant is or was actually residing, a person with whom
2 the defendant is having a dating relationship, a person with whom the defendant has a child
3 in common, the minor child of any of those persons or the defendant's minor child, to-wit:
4 CHARLOTTE TODD, by strangulation.

5 MARY-ANNE MILLER
6 Interim Clark County District Attorney
Nevada Bar #001419

7
8 BY Michelle Fleck
9 MICHELLE FLECK
10 Chief Deputy District Attorney
11 Nevada Bar #10040
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27 DA#12F00467X/jm/SVU
28 LVMPD EV#1201090679
(TK4)

ORIGINAL

10:30 87
FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

FEB 22 2012

BY *Jill Chambers*
JILL M. CHAMBERS, DEPUTY

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE FLECK
6 Chief Deputy District Attorney
7 Nevada Bar #10040
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

Case No: C-12-279379-1
Dept No: VI

11 -vs-

12 DUJUAN DON LOOPER,
13 #1871455

AMENDED
INFORMATION

14 Defendant.

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 MARY-ANNE MILLER, Interim District Attorney within and for the County of
18 Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the
19 Court:

20 That DUJUAN DON LOOPER, the Defendant(s) above named, having committed
21 the crimes of **SECOND DEGREE KIDNAPPING** (Category B Felony - NRS 200.310,
22 200.330); **COERCION** (Category B Felony - NRS 207.190); **CHILD ABUSE &**
23 **NEGLECT** (Category B Felony - NRS 200.508); **BATTERY CONSTITUTING**
24 **DOMESTIC VIOLENCE - STRANGULATION** (Category C Felony - NRS 200.481;
25 200.485; 33.018); and **BATTERY CONSTITUTING DOMESTIC VIOLENCE**
26 (Misdemeanor - NRS 200.481; 200.485; 33.018), on or between the 8th day of January,
27 2012 and the 9th day of January, 2012, within the County of Clark, State of Nevada, contrary
28 to the form, force and effect of statutes in such cases made and provided, and against the

C-12-279379-1
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Amended Information
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1 peace and dignity of the State of Nevada,

2 COUNT 1 - SECOND DEGREE KIDNAPPING

3 did wilfully, unlawfully, feloniously, and without authority of law, seize, inveigle,
4 take, carry away, or kidnap CHARLOTTE TODD, a human being, against her will, and
5 without her consent, with the intent to keep the said CHARLOTTE TODD detained against
6 her will.

7 COUNT 2 - COERCION

8 did then and there wilfully, unlawfully, and feloniously use physical force, or the
9 immediate threat of such force, against CHARLOTTE TODD, with intent to compel her to
10 do, or abstain from doing, an act which she had a right to do, or abstain from doing, by
11 throwing the said CHARLOTTE TODD to the ground and/or placing his hand on her throat
12 and/or by preventing her from calling 9-1-1 and/or obtaining any other assistance by taking
13 her cellular telephone and/or any other available telephone from the said CHARLOTTE
14 TODD and/or her home.

15 COUNT 3 - CHILD ABUSE & NEGLECT

16 did wilfully, unlawfully, feloniously and knowingly neglect, cause, or permit a child
17 under the age of 18 years, to-wit: CHARDAE TODD, being approximately 13 years of age,
18 to suffer unjustifiable physical pain, or mental suffering, or by placing the said CHARDAE
19 TODD in a position where she might have suffered unjustifiable physical pain or mental
20 suffering, to-wit: by throwing and/or punching and/or choking the said CHARLOTTE
21 TODD in the view of her 13 year old child CHARDAE TODD.

22 COUNT 4 - CHILD ABUSE & NEGLECT

23 did wilfully, unlawfully, feloniously and knowingly neglect, cause, or permit a child
24 under the age of 18 years, to-wit: ATLANTIS TODD, being approximately 9 years of age,
25 to suffer unjustifiable physical pain, or mental suffering, or by placing the said ATLANTIS
26 TODD in a position where he might have suffered unjustifiable physical pain or mental
27 suffering, to-wit: by throwing and/or punching and/or choking the said CHARLOTTE
28 TODD in the view of her 9 year old child ATLANTIS TODD.

1 COUNT 5 - BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

2 did then and there wilfully, unlawfully, and feloniously use force or violence upon
3 the person of the defendant's spouse, former spouse, or any other person to whom the
4 defendant is related by blood or marriage, a person with whom the defendant is or was
5 actually residing, a person with whom the defendant is having a dating relationship, a person
6 with whom the defendant has a child in common, the minor child of any of those persons or
7 the defendant's minor child, to-wit: CHARLOTTE TODD, by strangulation.

8 COUNT 6 - BATTERY CONSTITUTING DOMESTIC VIOLENCE

9 did then and there wilfully and unlawfully use force or violence against or upon the
10 person of his spouse, former spouse, any other person to whom he is related by blood or
11 marriage, a person with whom he is or was actually residing, a person with whom he has had
12 or is having a dating relationship, a person with whom he has a child in common, the minor
13 child of any of those persons or his minor child, to-wit: CHARLOTTE TODD, by throwing
14 the said CHARLOTTE TODD to the ground and/or punching the said CHARLOTTE
15 TODD.

16 STEVEN B. WOLFSON
17 Clark County District Attorney
Nevada Bar #001565

18
19 BY Michelle Fleck -
20 MICHELLE FLECK
21 Chief Deputy District Attorney
Nevada Bar #10040

22 Names of witnesses known to the District Attorney's Office at the time of filing this
23 Information are as follows:

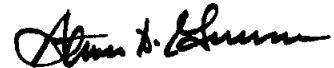
24 <u>NAME</u>	<u>ADDRESS</u>
25 BERRY, JOHN	LVMPD #14201
26 CORDERO, DANNY	LVMPD #13963
27 CUSTODIAN OF RECORDS	CCDC
28 CUSTODIAN OF RECORDS	LVMPD COMMUNICATIONS

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CUSTODIAN OF RECORDS
ENDOZO, RICO
HARDMAN, ANN
TODD, CHARLOTTE

LVMPD RECORDS
LVMPD #13146
LVMPD #13640
C/O DISTRICT ATTORNEY'S OFFICE

DA#12F00467X/jm/SVU
LVMPD EV#1201090679
(TK4)



CLERK OF THE COURT

AINF
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHELLE FLECK
Chief Deputy District Attorney
Nevada Bar #10040
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

Case No: C-12-279379-1
Dept No: VI

-vs-

DUJUAN DON LOOPER,
#1871455
Defendant.

SECOND AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss.

MARY-ANNE MILLER, Interim District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That DUJUAN DON LOOPER, the Defendant(s) above named, having committed the crimes of **SECOND DEGREE KIDNAPPING (Category B Felony - NRS 200.310, 200.330); COERCION (Category B Felony - NRS 207.190); CHILD ABUSE & NEGLECT (Category B Felony - NRS 200.508); BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION (Category C Felony - NRS 200.481; 200.485; 33.018); SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category A Felony - NRS 200.364, 200.366); LEWDNESS WITH A CHILD UNDER THE AGE OF 14 (Category A Felony - NRS 201.230); USE OF MINOR IN PRODUCING PORNOGRAPHY (Category A Felony - NRS 200.700,**

1 **200.710, 200.750) and POSSESSION OF VISUAL PRESENTATION DEPICTING**
2 **SEXUAL CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730), on or**
3 **between the 8th day of January, 2012 and the 9th day of January, 2012, within the County of**
4 **Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made**
5 **and provided, and against the peace and dignity of the State of Nevada,**

6 **COUNT 1 - SECOND DEGREE KIDNAPPING**

7 did wilfully, unlawfully, feloniously, and without authority of law, seize, inveigle,
8 take, carry away, or kidnap CHARLOTTE TODD, a human being, against her will, and
9 without her consent, with the intent to keep the said CHARLOTTE TODD detained against
10 her will.

11 **COUNT 2 - COERCION**

12 did then and there wilfully, unlawfully, and feloniously use physical force, or the
13 immediate threat of such force, against CHARLOTTE TODD, with intent to compel her to
14 do, or abstain from doing, an act which she had a right to do, or abstain from doing, by
15 throwing the said CHARLOTTE TODD to the ground and/or placing his hand on her throat
16 and/or by preventing her from calling 9-1-1 and/or obtaining any other assistance by taking
17 her cellular telephone and/or any other available telephone from the said CHARLOTTE
18 TODD and/or her home.

19 **COUNT 3 - CHILD ABUSE & NEGLECT**

20 did wilfully, unlawfully, feloniously and knowingly neglect, cause, or permit a child
21 under the age of 18 years, to-wit: CHARDAE TODD, being approximately 13 years of age,
22 to suffer unjustifiable physical pain, or mental suffering, or by placing the said CHARDAE
23 TODD in a position where she might have suffered unjustifiable physical pain or mental
24 suffering, to-wit: by throwing and/or punching and/or choking the said CHARLOTTE
25 TODD in the view of her 13 year old child CHARDAE TODD.

26 **COUNT 4 - CHILD ABUSE & NEGLECT**

27 did wilfully, unlawfully, feloniously and knowingly neglect, cause, or permit a child
28 under the age of 18 years, to-wit: ATLANTIS TODD, being approximately 9 years of age,

1 to suffer unjustifiable physical pain, or mental suffering, or by placing the said ATLANTIS
2 TODD in a position where he might have suffered unjustifiable physical pain or mental
3 suffering, to-wit: by throwing and/or punching and/or choking the said CHARLOTTE
4 TODD in the view of her 9 year old child ATLANTIS TODD.

5 COUNT 5 - BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

6 did then and there wilfully, unlawfully, and feloniously use force or violence upon
7 the person of the defendant's spouse, former spouse, or any other person to whom the
8 defendant is related by blood or marriage, a person with whom the defendant is or was
9 actually residing, a person with whom the defendant is having a dating relationship, a person
10 with whom the defendant has a child in common, the minor child of any of those persons or
11 the defendant's minor child, to-wit: CHARLOTTE TODD, by strangulation.

12 COUNT 6 - SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF
13 AGE

14 did, then and there, willfully, unlawfully, and feloniously sexually assault and subject
15 CHARDAE TODD, a child under fourteen years of age, to sexual penetration, to-wit: digital
16 penetration, by said Defendant inserting his finger into the genital opening of the said
17 CHARDAE TODD, against her will, or under conditions in which Defendant knew, or
18 should have known, that the said CHARDAE TODD was mentally or physically incapable
19 of resisting or understanding the nature of Defendant's conduct.

20 COUNT 7 - LEWDNESS WITH A CHILD UNDER THE AGE OF 14

21 did, then and there, willfully, lewdly, unlawfully, and feloniously commit a lewd or
22 lascivious act upon or with the body, or any part or member thereof, a child, to-wit:
23 CHARDAE TODD, said child being under the age of fourteen years, by said Defendant
24 using his hand(s) and/or finger(s) to touch and/or rub and/or fondle the genital area of the
25 said CHARDAE TODD, with the intent of arousing, appealing to, or gratifying the lust,
26 passions, or sexual desires of said Defendant, or said child.

27 ///

28 ///

1 COUNT 8 - USE OF MINOR IN PRODUCING PORNOGRAPHY

2 did, then and there, willfully, unlawfully, feloniously, and knowingly, encourage,
3 entice, coerce or permit CHARDAE TODD, a minor, to be the subject of a sexual portrayal
4 in a performance, to-wit: by said DEFENDANT posing the said CHARDAE TODD in such
5 a manner that her genital area is exposed and/or using his hand(s) and/or finger(s) to separate
6 the lip(s) of the genital opening of the said CHARDAE TODD, for the purpose of producing
7 a pornographic performance and that said performance was recorded by the defendant on a
8 mobile phone and/or by still photography.

9 COUNT 9 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
10 CONDUCT OF A CHILD

11 did, then and there, feloniously, knowingly and willfully, have in his possession a
12 film, photograph, or other visual presentation depicting a person under the age of 16 years as
13 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
14 in or simulate sexual conduct, to-wit: mobile phone image(s) and/or still photography
15 depicting the said DEFENDANT posing the said CHARDAE TODD in such a manner that
16 her genital area is exposed and/or using his hand(s) and/or finger(s) to separate the lip(s) of
17 the genital opening of the said CHARDAE TODD.

18
19 STEVEN B. WOLFSON
20 Clark County District Attorney
Nevada Bar #001565

21 BY /s/ MICHELLE FLECK
22 MICHELLE FLECK
23 Chief Deputy District Attorney
24 Nevada Bar #10040
25
26

27 DA#12F00467X/jm/SVU
28 LVMPD EV#1201090679
(TK4)

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JAN 08 2014

BY: 
SYLVIA D. PEREZ, DEPUTY

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE FLECK
6 Chief Deputy District Attorney
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8 200 Lewis Avenue
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10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

Case No: C-12-279379-1
Dept No: VI

11 -vs-

12 DUJUAN DON LOOPER,
13 #1871455
14 Defendant.

THIRD AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 STEVEN B. WOLFSON, Interim District Attorney within and for the County of
18 Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the
19 Court:

20 That DUJUAN DON LOOPER, the Defendant(s) above named, having committed
21 the crimes of **ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN**
22 **YEARS OF AGE (Category B Felony - NRS 193.330, 200.364, 200.366); BATTERY**
23 **CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION (Category C**
24 **Felony - NRS 200.481; 200.485; 33.018) and POSSESSION OF VISUAL**
25 **PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B**
26 **Felony - NRS 200.700, 200.730), on or between the 8th day of January, 2012 and the 9th**
27 **day of January, 2012, within the County of Clark, State of Nevada, contrary to the form,**
28 **force and effect of statutes in such cases made and provided, and against the peace and**

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1 dignity of the State of Nevada,

2 COUNT 1 – ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
3 YEARS OF AGE

4 did, then and there, willfully, unlawfully, and feloniously attempt to sexually assault
5 and subject CHARDAE TODD, a child under fourteen years of age, to sexual penetration,
6 to-wit: digital penetration, by said Defendant attempting to insert his finger into the genital
7 opening of the said CHARDAE TODD, against her will, or under conditions in which
8 Defendant knew, or should have known, that the said CHARDAE TODD was mentally or
9 physically incapable of resisting or understanding the nature of Defendant's conduct.

10 COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

11 did then and there wilfully, unlawfully, and feloniously use force or violence upon
12 the person of the defendant's spouse, former spouse, or any other person to whom the
13 defendant is related by blood or marriage, a person with whom the defendant is or was
14 actually residing, a person with whom the defendant is having a dating relationship, a person
15 with whom the defendant has a child in common, the minor child of any of those persons or
16 the defendant's minor child, to-wit: CHARLOTTE TODD, by strangulation.

17 COUNT 3 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
18 CONDUCT OF A CHILD

19 did, then and there, feloniously, knowingly and willfully, have in his possession a
20 film, photograph, or other visual presentation depicting a person under the age of 16 years as
21 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
22 in or simulate sexual conduct, to-wit: mobile phone image(s) and/or still photography
23 depicting the said DEFENDANT posing the said CHARDAE TODD in such a manner that

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1 her genital area is exposed and/or using his hand(s) and/or finger(s) to separate the lip(s) of
2 the genital opening of the said CHARDAE TODD.
3
4

5 STEVEN B. WOLFSON
6 Clark County District Attorney
7 Nevada Bar #001565

8 BY M. Fleck
9 MICHELLE FLECK
10 Chief Deputy District Attorney
11 Nevada Bar #10040
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27 DA#12F00467X/jm/SVU
28 LVMPD EV#1201090679
(TK4)

ORIGINAL

1 **GPA**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **MICHELLE FLECK**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #10040**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

JAN 08 2014

BY 
SYLVIA D. PEREZ, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 **THE STATE OF NEVADA,**
9
10 **Plaintiff,**

11 **-vs-**

12 **DUJUAN DON LOOPER,**
13 **#1871455**

14 **Defendant.**

CASE NO: C-12-279379-1

DEPT NO: VI

14 **GUILTY PLEA AGREEMENT**

15 I hereby agree to plead guilty to: **COUNT 1 - ATTEMPT SEXUAL ASSAULT**
16 **WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category B Felony - NRS**
17 **193.330, 200.364, 200.366); COUNT 2 - BATTERY CONSTITUTING DOMESTIC**
18 **VIOLENCE - STRANGULATION (Category C Felony - NRS 200.481; 200.485;**
19 **33.018) and COUNT 3 - POSSESSION OF VISUAL PRESENTATION DEPICTING**
20 **SEXUAL CONDUCT OF A CHILD (Category B Felony - NRS 200.700, 200.730), as**
21 **more fully alleged in the charging document attached hereto as Exhibit "1".**

22 My decision to plead guilty is based upon the plea agreement in this case which is as
23 follows:

24 The State retains the right to argue at rendition of sentence. Additionally, the State
25 will not oppose dismissal of Case No. C287522.

26 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
27 and/or impounded in connection with the instant case and/or any other case negotiated in
28 whole or in part in conjunction with this plea agreement.

1 I understand and agree that, if I fail to interview with the Department of Parole and
2 Probation, fail to appear at any subsequent hearings in this case, or an independent
3 magistrate, by affidavit review, confirms probable cause against me for new criminal charges
4 including reckless driving or DUI, but excluding minor traffic violations, that the State will
5 have the unqualified right to argue for any legal sentence and term of confinement allowable
6 for the crime(s) to which I am pleading guilty, including the use of any prior convictions I
7 may have to increase my sentence as an habitual criminal to five (5) to twenty (20) years, life
8 without the possibility of parole, life with the possibility of parole after ten (10) years, or a
9 definite twenty-five (25) year term with the possibility of parole after ten (10) years.

10 Otherwise I am entitled to receive the benefits of these negotiations as stated in this
11 plea agreement.

12 CONSEQUENCES OF THE PLEA

13 I understand that by pleading guilty I admit the facts which support all the elements of
14 the offense(s) to which I now plead as set forth in Exhibit "I".

15 **As to Count 1**, I understand that as a consequence of my plea of guilty the Court
16 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
17 term of not less than TWO (2) years and a maximum term of not more than TWENTY (20)
18 years. The minimum term of imprisonment may not exceed forty percent (40%) of the
19 maximum term of imprisonment. I understand that the law requires me to pay an
20 Administrative Assessment Fee.

21 **As to Count 2**, I understand that as a consequence of my plea of guilty the Court
22 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
23 term of not less than ONE (1) year and a maximum term of not more than FIVE (5) years.
24 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
25 term of imprisonment. I understand that I may also be fined up to \$10,000.00.

26 **As to Count 3**, I understand that as a consequence of my plea of guilty the Court
27 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
28 term of not less than ONE (1) year and a maximum term of not more than SIX (6) years.

1 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
2 term of imprisonment. I understand that I may also be fined up to \$5,000.00.

3 I understand that, if appropriate, I will be ordered to make restitution to the victim of
4 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
5 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
6 reimburse the State of Nevada for any expenses related to my extradition, if any.

7 I further understand that if I am pleading guilty to charges of Burglary, Invasion of
8 the Home, Possession of a Controlled Substance with Intent to Sell, Sale of a Controlled
9 Substance, or Gaming Crimes, for which I have prior felony conviction(s), I will not be
10 eligible for probation and may receive a higher sentencing range.

11 **As to Counts 1 and 2** I understand that I am not eligible for probation for the offense
12 to which I am pleading guilty.

13 **As to Count 2**, I understand that I am pleading to a battery offense constituting
14 domestic violence, by willfully and unlawfully committing an act of force or violence upon
15 my spouse, former spouse, a person to whom I have had or am having a dating relationship,
16 a person with whom I have a child in common, my minor child, or the minor child of one of
17 those persons. I also understand the State will use this conviction, and any other prior
18 conviction from this or any other State which prohibits the same or similar conduct or
19 enhance the penalty for any similar subsequent offense.

20 **As to Count 3**, I also understand that pursuant to NRS 176.139 and my plea of guilty
21 to a sexual offense for which the suspension of sentence or the granting of probation is
22 permitted, the Division of Parole and Probation shall arrange for a psychosexual evaluation
23 as part of the division's presentence investigative report to the Court.

24 I understand that I am not eligible for probation unless that psychosexual evaluation
25 certifies that I do not represent a high risk to reoffend. I understand that, except as otherwise
26 provided by statute, the question of whether I receive probation is in the discretion of the
27 sentencing judge.

28 ///

1 Further, that before I am eligible for parole a panel consisting of the administrator of
2 the mental health and developmental services of the department of human resources or his
3 designee; the director of the department of corrections or his designee; and a psychologist
4 license to practice in this state or a psychiatrist license to practice medicine in this state
5 certifies that I was under observation while confined in an institution of the department of
6 corrections that I do not represent a high risk to reoffend based upon a currently accepted
7 standard of assessment.

8 I further understand that the Court will include as part of my sentence, in addition to
9 any other penalties provided by law, pursuant to NRS 179D.450, I must register as a sex
10 offender within forty-eight (48) hours of release from custody.

11 I also understand that I must submit to blood and/or saliva tests under the Direction of
12 the Division of Parole and Probation to determine genetic markers and/or secretor status.

13 I understand that if more than one sentence of imprisonment is imposed and I am
14 eligible to serve the sentences concurrently, the sentencing judge has the discretion to order
15 the sentences served concurrently or consecutively.

16 I also understand that information regarding charges not filed, dismissed charges, or
17 charges to be dismissed pursuant to this agreement may be considered by the judge at
18 sentencing.

19 I have not been promised or guaranteed any particular sentence by anyone. I know
20 that my sentence is to be determined by the Court within the limits prescribed by statute.

21 I understand that if my attorney or the State of Nevada or both recommend any
22 specific punishment to the Court, the Court is not obligated to accept the recommendation.

23 I understand that if the State of Nevada has agreed to recommend or stipulate a
24 particular sentence or has agreed not to present argument regarding the sentence, or agreed
25 not to oppose a particular sentence, such agreement is contingent upon my appearance in
26 court on the initial sentencing date (and any subsequent dates if the sentencing is continued).

27 I understand that if I fail to appear for the scheduled sentencing date or I commit a new
28 criminal offense prior to sentencing the State of Nevada would regain the full right to argue

1 for any lawful sentence.

2 I understand if the offense(s) to which I am pleading guilty to was committed while I
3 was incarcerated on another charge or while I was on probation or parole that I am not
4 eligible for credit for time served toward the instant offense(s).

5 I understand that if I am not a United States citizen, any criminal conviction will
6 likely result in serious negative immigration consequences including but not limited to:

- 7 1. The removal from the United States through deportation;
- 8 2. An inability to reenter the United States;
- 9 3. The inability to gain United States citizenship or legal residency;
- 10 4. An inability to renew and/or retain any legal residency status; and/or
- 11 5. An indeterminate term of confinement, with the United States Federal
12 Government based on my conviction and immigration status.

13 Regardless of what I have been told by any attorney, no one can promise me that this
14 conviction will not result in negative immigration consequences and/or impact my ability to
15 become a United States citizen and/or a legal resident.

16 I understand that the Division of Parole and Probation will prepare a report for the
17 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
18 sentencing, including my criminal history. This report may contain hearsay information
19 regarding my background and criminal history. My attorney and I will each have the
20 opportunity to comment on the information contained in the report at the time of sentencing.
21 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
22 may also comment on this report.

23 WAIVER OF RIGHTS

24 By entering my plea of guilty, I understand that I am waiving and forever giving up
25 the following rights and privileges:

- 26 1. The constitutional privilege against self-incrimination, including the
27 right to refuse to testify at trial, in which event the prosecution would
28 not be allowed to comment to the jury about my refusal to testify.

///

2. The constitutional right to a speedy and public trial by an impartial jury, free of excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the assistance of an attorney, either appointed or retained. At trial the State would bear the burden of proving beyond a reasonable doubt each element of the offense(s) charged.
3. The constitutional right to confront and cross-examine any witnesses who would testify against me.
4. The constitutional right to subpoena witnesses to testify on my behalf.
5. The constitutional right to testify in my own defense.
6. The right to appeal the conviction with the assistance of an attorney, either appointed or retained, unless specifically reserved in writing and agreed upon as provided in NRS 174.035(3). I understand this means I am unconditionally waiving my right to a direct appeal of this conviction, including any challenge based upon reasonable constitutional, jurisdictional or other grounds that challenge the legality of the proceedings as stated in NRS 177.015(4). However, I remain free to challenge my conviction through other post-conviction remedies including a habeas corpus petition pursuant to NRS Chapter 34.

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.

All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.

I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this


1 agreement or the proceedings surrounding my entry of this plea.

2 My attorney has answered all my questions regarding this guilty plea agreement and
3 its consequences to my satisfaction and I am satisfied with the services provided by my
4 attorney.

5 DATED this 8 day of January, 2014.

8 
9 DUJUAN DON LOOPER
Defendant

10 AGREED TO BY:

12 
13 MICHELLE FLECK
14 Chief Deputy District Attorney
15 Nevada Bar #10040

1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named herein and as an officer of the
3 court hereby certify that:

- 4 1. I have fully explained to the Defendant the allegations contained in the
5 charge(s) to which guilty pleas are being entered.
- 6 2. I have advised the Defendant of the penalties for each charge and the
7 restitution that the Defendant may be ordered to pay.
- 8 3. I have inquired of Defendant facts concerning Defendant's immigration status
9 and explained to Defendant that if Defendant is not a United States citizen any
10 criminal conviction will most likely result in serious negative immigration
11 consequences including but not limited to:
- 12 a. The removal from the United States through deportation;
- 13 b. An inability to reenter the United States;
- 14 c. The inability to gain United States citizenship or legal residency;
- 15 d. An inability to renew and/or retain any legal residency status; and/or
- 16 e. An indeterminate term of confinement, by with United States Federal
17 Government based on the conviction and immigration status.

18 Moreover, I have explained that regardless of what Defendant may have been
19 told by any attorney, no one can promise Defendant that this conviction will
20 not result in negative immigration consequences and/or impact Defendant's
21 ability to become a United States citizen and/or legal resident.

- 22 4. All pleas of guilty offered by the Defendant pursuant to this agreement are
23 consistent with the facts known to me and are made with my advice to the
24 Defendant.
- 25 5. To the best of my knowledge and belief, the Defendant:
- 26 a. Is competent and understands the charges and the consequences of
27 pleading guilty as provided in this agreement,
- 28 b. Executed this agreement and will enter all guilty pleas pursuant hereto
voluntarily, and
- c. Was not under the influence of intoxicating liquor, a controlled
substance or other drug at the time I consulted with the Defendant
as certified in paragraphs 1 and 2 above.

Dated: This 8 day of January, 2014.


ATTORNEY FOR DEFENDANT

jm/SVU

1 AINF
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE FLECK
6 Chief Deputy District Attorney
7 Nevada Bar #10040
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

14 THE STATE OF NEVADA,
15
16 Plaintiff,

Case No: C-12-279379-1
Dept No: VI

17 -vs-

18 DUJUAN DON LOOPER,
19 #1871455
20 Defendant.

21 THIRD AMENDED
22 INFORMATION

23 STATE OF NEVADA }
24 COUNTY OF CLARK } ss.

25 STEVEN B. WOLFSON, Interim District Attorney within and for the County of
26 Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the
27 Court:

28 That DUJUAN DON LOOPER, the Defendant(s) above named, having committed
the crimes of **ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
YEARS OF AGE (Category B Felony - NRS 193.330, 200.364, 200.366); BATTERY
CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION (Category C
Felony - NRS 200.481; 200.485; 33.018) and POSSESSION OF VISUAL
PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B
Felony - NRS 200.700, 200.730)**, on or between the 8th day of January, 2012 and the 9th
day of January, 2012, within the County of Clark, State of Nevada, contrary to the form,
force and effect of statutes in such cases made and provided, and against the peace and

1 dignity of the State of Nevada,

2 COUNT 1 - ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN
3 YEARS OF AGE

4 did, then and there, willfully, unlawfully, and feloniously attempt to sexually assault
5 and subject CHARDAE TODD, a child under fourteen years of age, to sexual penetration,
6 to-wit: digital penetration, by said Defendant attempting to insert his finger into the genital
7 opening of the said CHARDAE TODD, against her will, or under conditions in which
8 Defendant knew, or should have known, that the said CHARDAE TODD was mentally or
9 physically incapable of resisting or understanding the nature of Defendant's conduct.

10 COUNT 2 - BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION

11 did then and there wilfully, unlawfully, and feloniously use force or violence upon
12 the person of the defendant's spouse, former spouse, or any other person to whom the
13 defendant is related by blood or marriage, a person with whom the defendant is or was
14 actually residing, a person with whom the defendant is having a dating relationship, a person
15 with whom the defendant has a child in common, the minor child of any of those persons or
16 the defendant's minor child, to-wit: CHARLOTTE TODD, by strangulation.

17 COUNT 3 - POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL
18 CONDUCT OF A CHILD

19 did, then and there, feloniously, knowingly and willfully, have in his possession a
20 film, photograph, or other visual presentation depicting a person under the age of 16 years as
21 the subject of a sexual portrayal or engaging in, or simulating, or assisting others to engage
22 in or simulate sexual conduct, to-wit: mobile phone image(s) and/or still photography
23 depicting the said DEFENDANT posing the said CHARDAE TODD in such a manner that

24 ///

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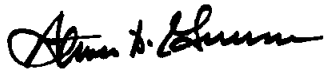
1 her genital area is exposed and/or using his hand(s) and/or finger(s) to separate the lip(s) of
2 the genital opening of the said CHARDAE TODD.

3
4 STEVEN B. WOLFSON
5 Clark County District Attorney
6 Nevada Bar #001565

7 BY


8 MICHELLE FLECK
9 Chief Deputy District Attorney
10 Nevada Bar #10040
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27 DA#12F00467X/jm/SVU
28 LVMPD EV#1201090679
(TK4)



CLERK OF THE COURT

1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C279379, C279418

DEPT. VI

10 vs.

11 DUJUAN DON LOOPER,
12 Defendant.

13
14 BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE
15 WEDNESDAY, JANUARY 8, 2014

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **STATUS CHECK TRIAL STATUS**

18 APPEARANCES:

19 For the State:

TYLER SMITH, ESQ.
Deputy District Attorney

21
22 For the Defendant:

MAJORIE E. BARBEAU, ESQ.

23
24
25 RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 Wednesday, January 8, 2014 at 11:44 a.m.

2
3 MS. BARBEAU: Good morning, Your Honor, Margery Barbeau with Patti
4 Sgro Lewis Roger appearing on behalf of Mr. Looper.

5 THE COURT: Okay. We put this -- okay, never mind. I see we have some
6 documentation here. Okay it appears there is a Guilty Plea Agreement. What are
7 the negotiations?

8 MS. BARBEAU: Do you want me to go or do you want to do this?

9 MR. SMITH: It's all yours.

10 MS. BARBEAU: Yes, Your Honor, Mr. Looper will plead guilty to count 1
11 attempt sexual assault of a minor under 14 years of age, count 2 battery constituting
12 domestic violence, strangulation, and count 3 possession of visual presentation
13 depicting sexual conduct of a child. The State will retain the right to argue at
14 sentencing. And the State will not oppose dismissal of case number C287522.

15 MR. SMITH: That is a correct statement, Your Honor.

16 THE COURT: Okay. Alright, and we have the Third Amended Information,
17 which contains those charges to which he's pleading today. Okay.

18 Alright so, Mr. Looper, please tell me your true and complete name.

19 THE DEFENDANT: Dajuan Don Looper.

20 THE COURT: Okay. And how old are you?

21 THE DEFENDANT: 29.

22 THE COURT: How far did you go in school?

23 THE DEFENDANT: High school.

24 THE COURT: So do you read, write, and understand the English language?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you had an opportunity to review the Third Amended
2 Information, which charges you with attempt sexual assault with a minor under 14
3 years of age, battery constituting domestic violence strangulation, and possession of
4 visual presentation depicting sexual conduct of a child.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Okay. Have you read those charges?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you need me to read them out loud to you again in open
9 court?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you understand them?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Did you go over them with your attorney?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: As to the charges set forth in the Third Amended Information
16 how do you plead guilty or not guilty?

17 THE DEFENDANT: Guilty.

18 THE COURT: Before I accept your plea of guilty I must be satisfied that your
19 plea is freely and voluntarily given. Are you making this plea freely and voluntarily?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has anyone forced or coerced you to enter this plea?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Has anyone made you any promises other than what's
24 contained in this Guilty Plea Agreement to get you to enter this plea?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: I do have before me a written Guilty Plea Agreement, did you
2 sign this agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: Did you read it before you signed it?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand everything contained in it?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And did you go over it with your attorney?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: You understand that count 1, the attempt sexual assault with a
11 minor under 14 years of age carries a potential sentence of 2 to 20 years in Nevada
12 Department of Corrections?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: You understand that count 2, battery domestic violence
15 strangulation carries a potential sentence of 1 to 5 years in Nevada Department of
16 Corrections?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And in fact count 2 also -- there's a potential for a fine of up to
19 \$10,000. You understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Count 3, possession of visual presentation depicting sexual
22 conduct of a child carries a potential sentence of 1 to 6 years in Nevada Department
23 of Corrections as well as a possible fine of up to \$5,000. You understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You understand you'll be required to pay an Administrative

1 Assessment Fee and any appropriate restitution in this case?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You understand that you are not eligible for probation for
4 counts 1 and 2?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: You understand that with respect to count 2 the battery
7 domestic violence strangulation offense that by pleading to that charge the State
8 can use that conviction and any other battery domestic violence conviction to
9 enhance the penalty for similar future offenses. If you have any future battery
10 domestic violence this will create an enhancement to that charge. You understand
11 that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And as to count 3, the visual presentation of sexual conduct of
14 a child charge that by pleading guilty to that charge there's going to be a
15 psychosexual evaluation -- it's kind of moot in a sense -- but you wouldn't be eligible
16 for probation unless it found you were not a high risk to reoffend. Additionally if you
17 serve time in prison you can't be paroled unless there's a finding that you do not
18 represent a high risk to reoffend. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And additionally your sentence will include a requirement that
21 you register as a sex offender. Do you understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: It's not lifetime supervision?

24 MS. BARBEAU: Judge, that was part of the negotiations. So it will be lifetime
25 supervision.

1 THE COURT: It is lifetime. So you understand you will also be subject to
2 lifetime supervision as a sex offender even after release from custody, do you
3 understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: You understand that the sentencing decision in this case is up
6 to me as the Judge, within those ranges that I outlined. You understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: No one can promise you leniency or special treatment because
9 the sentencing decision is up to me as the Judge, you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you have any questions for me or your attorney before I
12 accept your plea?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Now I just want to go over exactly what the State alleges you
15 did in these charges that your pleading to, to make sure that you understand that.

16 In count 1 it alleges that on or between January 8, 2012, and January 9,
17 2012, within Clark County Nevada, that you did then and there willfully, unlawfully,
18 and feloniously attempt to sexually assault and subject Chardae Todd, a child under
19 14 years of age, to sexual penetration, to-wit: digital penetration by attempting to
20 insert your finger into the genital opening of the said Chardae Todd against her will
21 or under conditions in which you knew or should have known that Ms. Todd was
22 mentally or physically incapable of resisting or understanding the nature or your
23 conduct. Did you commit that offense?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Count 2 also alleges that on or between January 8 and

1 January 9, 2012, within Clark County Nevada, that you did then and there willfully,
2 unlawfully, and feloniously use force or violence upon the person of your spouse,
3 former spouse or any other person to whom you're related by blood or marriage, a
4 person with whom you are or were residing, a person with whom you were having a
5 dating relationship, a person with whom you had a child in common, the minor child
6 of any of those persons, or your minor child, specifically Charlotte Todd by
7 strangulation. Did you commit that offense?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Count 3 alleges that also on or between January 8 and 9,
10 2012, within Clark County Nevada you did then and there feloniously, knowingly,
11 and willfully have in your possession a film, photograph, or other visual presentation
12 depicting a person under the age of 16 years as the subject of a sexual portrayal or
13 engaging in, or simulating, or assisting others to engage in or simulate sexual
14 conduct, to-wit: mobile phone images and/or still photography depicting you posing
15 the said Chardae Todd in such a manner that her genital area was exposed or using
16 your hands and/or fingers to separate the lips of the genital opening of the said
17 Chardae Todd. Did you commit that offense?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Are you pleading guilty today because you are truly guilty of
20 these three offenses?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Is that sufficient for the State?

23 MR. SMITH: It is, Your Honor.

24 THE COURT: I do find the Defendant's plea of guilty is freely and voluntarily
25 made, that he understands the nature of the offense --and the offenses and the

1 consequences of his plea and therefore accept his plea of guilty. This matter is
2 referred to Parole and Probation for preparation of a Presentence Investigation
3 Report.

4 THE CLERK: March 12th, 8:30.

5 THE COURT: Okay. And of course the trial date is vacated at this time.

6 MS. BARBEAU: And the calendar call, Your Honor?

7 THE COURT: And calendar call as well.

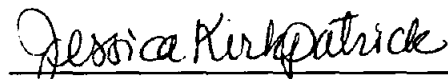
8 MS. BARBEAU: Thank you, Judge.

9 THE COURT: Yes, thank you.

10 [Hearing concluded at 11:55 a.m.]

11 * * * * *

12 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
13 proceedings in the above-entitled case to the best of my ability.

14 

15 Jessica Kirkpatrick
16 Court Recorder/Transcriber
17
18
19
20
21
22
23
24
25


CLERK OF THE COURT

1 **MEMO**
2 ANTHONY P. SGRO, ESQ.
3 Nevada Bar No. 3811
4 **PATTI, SGRO, LEWIS & ROGER**
5 720 South Seventh St., Third Floor
6 Las Vegas, Nevada 89101
7 tsgro@pslrfirm.com
8 Telephone No.: (702) 385-9595
9 Facsimile No.: (702) 386-2737
10 *Attorney for Defendant Dajuan D. Looper*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 * * *

14 THE STATE OF NEVADA,
15
16 Plaintiff,
17
18 vs.
19
20 DUJUAN D. LOOPER,
21
22 Defendant.

Case No.: C-12-279379-1
C-12-279418-1

Dept. VI

23 **SENTENCING MEMORANDUM**

24 COMES NOW, the Defendant, DUJUAN D. LOOPER, by and through his attorneys of
25 record, ANTHONY SGRO, ESQ., of PATTI, SGRO, LEWIS & ROGER, and hereby submits the
26 following SENTENCING MEMORANDUM with regard to the above-referenced case.

27 ///

28 ///

///

///

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1 This Memorandum is based upon the papers and pleadings filed herein, as well as the
2 following Points and Authorities.

3 DATED this 22nd day of April, 2014.



4
5 ANTHONY P. SGRO ESQ.
6 Nevada Bar No. 3811
7 PATTI, SGRO, LEWIS, & ROGER
8 720 S. 7th Street, 3rd Floor
9 Las Vegas, NV 89101
10 *Attorney for Defendant Dajuan D. Looper*

11 **POINTS AND AUTHORITIES**

12 **I. Summary of Charges**

13 Pursuant to a plea agreement entered into on January 8, 2014, Defendant DUJUAN D.
14 LOOPER pled guilty before this Honorable Court to one (1) count attempt sexual assault with a
15 minor under fourteen years of age; one (1) count battery constituting domestic violence -
16 strangulation and; one (1) count possession of visual presentation depicting sexual conduct of a
17 child. Sentencing is set in the instant matter for April 28, 2014. At the time of sentencing, Mr.
18 Looper will have 799 days credit for time served.

19 **II. Statement of Facts/ Procedural History**

20 Defendant DUJUAN D. LOOPER stands before this Honorable Court for sentencing on
21 three (3) felony counts. Pursuant to a plea agreement entered into on January 8, 2014, the State
22 retained the right to argue at the rendition of sentence. Additionally, the State will not oppose
23 dismissal of Case No. C-13-287522-1. Defendant has two prior convictions: one gross
24 misdemeanor for battery with substantial bodily harm and; one felony for conspiracy to commit a
25 crime (robbery), which Mr. Looper was sentenced to and successfully completed probation.

26 The Defendant has currently spent approximately 800 days in custody, subsequent to his
27 arrest on the instant case. Pursuant to statute, the Defendant must submit to a psychosexual
28

1 examination. Defendant must also register for his lifetime as a sex offender upon release from
2 prison. Defendant respectfully requests that this Honorable Court sentence him to the minimum
3 sentences associate with the charges and run those sentence concurrent.

4 **III. Mitigating Factors**

5 **a. Psychological Evaluation Demonstrates a Low Risk to Reoffend.**

6
7 On February 26, 2014, Mr. Looper voluntarily submitted to a psycho-sexual evaluation
8 with Greg Harder, PsyD. to determine his risk to reoffend. Dr. Harder conducted an interview
9 with Mr. Looper and determined that based upon his 1) prior successful completion of probation,
10 2) the fact that he does not abuse substances, 3) his lack of a juvenile arrest record, 4) his lack of
11 prior sexually related charges, 4) his lack of mental health difficulties, 5) his domestic
12 relationship at the time of the crime, 6) his ability to hold a relationship over two years, 7) his
13 age, 8) lack of childhood abuse, 9) lack of institutionalization, 10) lack of suicidal or homicidal
14 tendencies, 11) that the alleged victim was not a stranger, 12) lack of multiple victims, and 13)
15 lack of weapon used, that Mr. Looper is a low risk to reoffend. See Exhibit "1" attached hereto
16 and incorporated by reference.
17

18 While Mr. Looper is cognizant that he is not eligible for probation in the instant matter,
19 his low risk to reoffend presents a mitigating circumstance in the instant case. The low risk to
20 reoffend also represents that Mr. Looper is capable of rehabilitation and leaving prison a
21 productive member of society.
22

23 **b. Mr. Looper has a Stable and Supportive Family**

24 Mr. Looper has a large and stable family that both support and rely upon him. His aunt
25 Regina Kahill speaks regularly to Mr. Looper to "talk, meditate, and pray." See Exhibit "2." His
26 cousin, Michael Harris, notes that Mr. Looper was on the road to success as a boxer, and states
27 that he will be present and "encourage his [Mr. Looper] best efforts towards citizenship." See
28


1 Exhibit "3." Belana Harris, another of Mr. Looper's cousins, notes that he was always loving and
2 caring with his family. In a letter to this Court, Ms. Harris notes that her family has been strained
3 by Mr. Looper's incarceration, and adds that Mr. Looper has spent his time in jail bettering
4 himself. See Exhibit "4." Daniel Kahill, who has known Mr. Looper since he was a boy, speaks
5 to Mr. Looper on a daily basis. He notes that Mr. Looper has expressed remorse for what has
6 transpired and knows that he made a mistake. See Exhibit "5."

8 Mr. Looper has family in both Las Vegas and Michigan that have expressed the pain that
9 his incarceration has caused, as well their intent to support him upon his release. See Exhibits
10 "6," "7," "8,". It is demonstrable from the letters of Mr. Looper's family and friends that they
11 will be there to aid him in his rehabilitation and foster his quest to better himself.

12 **CONCLUSION**

14 Defendant respectfully requests that this Honorable Court sentence Mr. Looper to the
15 minimum sentence on all counts, and further run the sentences concurrent.

16 DATED this 22nd day of April, 2014.

17
18 
19 ANTHONY P. SGRO ESQ.
20 Nevada Bar No. 3811
21 PATTI, SGRO, LEWIS & ROGER
22 720 S. 7th Street, 3rd Floor
23 Las Vegas, NV 89101
24 Attorney for Defendant Dajuan D. Looper
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of April, 2014, I served a true and correct copy
of the foregoing document entitled: SENTENCING MEMORANDUM below:

 X sending a copy via email to the parties herein, as follows; and/or

 X placing the original in a sealed envelope, first-class, postage fully pre-paid
thereon, and depositing the envelope in the U.S. mail in Las Vegas, Nevada
addressed as follows:

Michelle Fleck, Esq.
Office of the District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155


An Employee of PATTI, SGRO, LEWIS & ROGER

EXHIBIT “1”

**PSYCHOLOGICAL
EVALUATION
PROVIDED SEPARATELY
TO DISTRICT ATTORNEY
AND COURT**

EXHIBIT “2”

From: Forigenna Kahill
22770 Golfview Dr.
Southfield, MI. 48033

To:
Honorable Judge Elissa F. Cadish
8th Judicial District Court
Department 6
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV. 89101

February 27, 2014

Re: Case of Dajuan Don Looper Inmate # 1871455

Honorable Judge Cadish,

I am writing this letter for Dajuan Looper who has been incarcerated for two years of his life and it has not been easy for him. He has talked to me his aunt Regina Kahill every other day that he has been locked up. We've had a lot of quality time for he and I to talk, to meditate and to pray together. I raised Juan since he was 12 years old. He's the son of my brother who died and his mother was going through some personal trouble at the time. She knew it was in Dajuan's best interest, to let him stay with us.

I brought Juan to Las Vegas at the age of 16. He wanted to be a champion boxer like his father and uncles. I managed Juan and other family boxers. He was always a good kid who had big dreams, of becoming a champion fighter. I introduced him to all of the top fighters and champions to help him get started. He met a young lady who exposed him to a lot of negative in his life, drinking, smoking, etc. This is where everything started to go wrong. He has since learned that it was the wrong crowd and the wrong direction for him to go. Juan is very remorseful for what he did.

He said he's so sorry for anything that he did wrong and he's sorry that anyone was hurt, to forgive him and God forgive him and it will never happen again. He apologizes to the Judges and the Courts and hope they have mercy on him with sentencing. Dajuan and the family pray that he will get a minimum if allowed by the Judge. I Regina Kahill, his aunt will take full responsibility to keep Dajuan continuing to go in the right direction and whatever I need to do to stay close with the courts to make this happen I will.

Thank You So Much

For Your Consideration

Regina Kahill

EXHIBIT “3”

From: Michael Harris
22770 Golfview Dr.
Southfield, MI. 48033

To:
Honorable Judge Elissa F. Cadish
8th Judicial District Court
Department 6
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV. 89101

February 27, 2014

Re: Case of Dajuan Don Looper Inmate # 1871455

Dajuan Looper is at 30, still a fairly young man, that we, his family, believe deserves a second chance. His would be, we believe, a much more productive life with us, than if he were to remain incarcerated. His most recent troubled relationship is the reason he is in jail. Dajuan can be credited with outstanding achievements, especially as an all around athlete and a boxer.

I know that the charges and the challenges that Dajuan now faces are quite serious, and hope that you will be most merciful in your decisions regarding his case.

Whatever the outcome, I promise, that we will work very hard with you and the Justice Court, to support and encourage his best efforts towards good citizenship.

Thank You,

For Your Time and Consideration,

Sincerely,

Michael Harris

EXHIBIT “4”

From: Belana Harris
22770 Golfview Dr
Southfield, MI 48033

To: Honorable Judge E. J. Cadin
8th Judicial District Court
Department 6
Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101

February 27, 2014

Re: Case of Dujuan Don Looper Inmate #1871455

Dear,

Your Honor I am Dujuan's older cousin he was raised by my mother from a very early age before my uncle Dujuan's Father passed away he told his sister my mother Forgeness to look out for his son and raise him if something were to happen due to health

Pg 1 of 10

Factors that he were put her to care
for Duquan that she would step in
and raise him shortly after my
Uncle Donald Ryner passed
My mother did exactly what her
brother wanted her to do she raised
her nephew Duquan Looper
As a child Duquan was always
Very Loving and Caring with a beautiful
personality always very helpful and
always showing love for his family
and others he has always been very
talented and gifted everyone loves
being in Duquans presence because

pg 2 of 10

of his Compassion and Big Heart
always being the Life of the party
he is also very giving he would
give a person his last at any given
time. Dugan has had a great
Love for sports since he was a young
child coming from a family of
Boxing Champions Dugan Exhibited
the Love and natural Talent for
Boxing more than any other sport
at this time we were living in California
so my mother took Dugan along
with his cousins who were Boxers
as well to the Boxing gym and

pg 34.

Being from Michigan a state rich with culture and the home state of many great boxing champions with a specific boxing style Dugan showed that some kind of strength style and talent and became a boxing standout trainers managers and promoters took a huge liking to him and by the time he was in his early twenties he had made a name for himself and was getting ready to turn pro. as his cousin I know his heart the real Dugan Losper sometimes in life good people get caught up in bad

pg 44

Situations that do not reflect their true character as a person and these circumstances that I and the rest of our Family has witnessed with Duguan being in jail for two years has really put a strain on our Hearts because we know his heart.

Your Honor Duguan has spent these two years in jail to better himself even more being in touch with his spiritual side having a Beautiful and close relationship with God Loving God praying daily and having Faith that

Pg 50

GOD will carry him through this time and this very unfortunate experience he enjoys reading and educating himself on a daily basis. Dwyer is humble and has expressed that he takes nothing for granted. Dwyer has always been a big teddy bear with an infectious spirit and would never hurt anybody especially a child & truly believes that the people or friends that are in a person's company can impact your life in a certain way positively or negatively depending

pg 64

On the situation at hand and in this particular matter I feel could have a lot to do with this situation and became a factor in what all as a family have witnessed and ultimately resulting in Dugan being in this position.

Your honor Dugan Luper is a good young man with great potential to help others and do great things in his life and making a positive difference in all that he does and being an inspiration to others he has shown great respect for

p57.

The Courts and pray for a positive
and Blessed Outcome on his Court date
and has expressed being Thankful and
ever so grateful to you your Honor
for accepting and taking the time
to read our family letters.

Your Honor & Deyuan Van Loopers
Cousins Humbly ask you for a light
sentence if it were to have to be that way
& pray for this Blessing along with
Family and friends.

Your Honor (Judge Cadish) I ask you to
please take this into consideration
for my Cousin Deyuan Looper

I feel and know in my soul that
my Cousin deserves this chance
to be the man he was born
to be God knows his Heart
I believe in him and know that
he is the sweetest person that
someone would ever want to meet
your Honor & give you my word
on that. I Thank you so very much
your Honor for taking the time to
read my letter and for allowing
myself and my family to express
and share what is on our hearts
and in our souls for our loved one.
pg 9/11

Duyuan Looper your Honor I pray
and humbly ask you to please
hear what is in our hearts
and to please give Duyuan
the opportunity to show you
and the court the great person
he truly is and to have the chance
to continue to live his life
and prosper by the Love and
Grace of God.

I Thank you Again,
your Honor (Judge Cadush)

Delana Garrie

EXHIBIT “5”

Dear Your Honorable Judge: Eliaz F. Ladish,
In writing you this letter in regards to
Shujuan D. Loopers character. I've
known him since he was 12 years old.
He ~~has~~ comes from a large family,
which primarily resides in Michigan.
Even though he relocated to Vegas,
he and I have been in touch on
a daily base. I was aware when he
got into his present situation, which
sometimes young men do. Shujuan is
an up an coming heavy weight prominent
boxer, he has a lot of support too,
in mostly ever gym in Vegas. He's
a fine young man that made a mistake.
I'm certain he's remorseful for what
has transpired, therefore I'm asking
you to be sympathetic and fair in
issuing your decision upon sentencing.
I'm praying that you will consider
this letter. I thank you in advance,
and may God bless you and your
entire family.

Sincerely Yours, Daniel Kalice

EXHIBIT “6”

Hi my name is ariana Rayner and i believe
That Dawn looper deserves to have as little
OF a sentence as you your honor can give all
OF us his family believe that he has truly
Changed and for the better and he knows
God now more than ever before

Im asken this to you your honor please let
Him have this chance to turn this all
Around like we his family know he can and
will if the chance is given to him im sure
you will not regret it he has found ways to
Improve his life while in prison

All he will get the chance to redo and
Turn around will be great he really has
Changed and is more than willing to improve
Even more as his life starts its
reshaping we have been waiting for this
Day to hear that Dawn looper can and
will be free soon

And all i ask is that you take all i've said
into consideration please and see this as a
true blessing to our family we really do miss
him so much and we hope one day soon
will be sitting somewhere face to face again

Please understand how hard it's been for all us
Hes family it would mean the world to us
and more to see him walk out those doors
Thank you your honor for taking consideration
he has really changed inside as well as out
spirit mind and body

We have seen this change with our own two
eyes as you will and we have felt his
change within our hearts once more i'de
like to say thank you your honor and all
that you do today is appreciated truly
for my Cousin Dawn Cooper

EXHIBIT “7”

TO: HONORABLE JUDGE ELISSA F CADISH
HI MY NAME IS MALCOLM RAYNER
DEAR YOUR HONOR I WOULD APPRECIATE IF
YOU WOULD TAKE IT EASY ON DUJUAN LOOPER
EVER BODY MAKE MISTAKES IT'S ALL IN HOW
YOU RECOVER THEM AND COME BACK A BETTER
AND IMPROVED PERSON HE HAD TWO YEARS TO
SIT BACK AND THINK ON ALL THE WRONG THINGS
HE DID BUT HE IS A BETTER AND CHANGE MAN
NOW HE IS GETTING IN TOUCH WITH GOD AND
HE IS JUST A BETTER PERSON AS A WHOLE

AND I DON'T SAY HE IS A BETTER MAN JUST
BECAUSE HE IS MY CUSIN DUJUAN LOOPER
IS A GREAT PERSON AND A LOVING PERSON
THAT DESERVE A CHANCE AT LIFE AND
MAY GOD AND YOU YOUR HONOR GIVE HIM A
CHANCE A NEW LOOK AT LIFE I WOULD
APPRECIATE SOME TYPE OF CONSIDERATION
AS TO WHAT I SAID AND I NO EVERYTHING
IS IN YOUR HANDS BUT I HOPE THIS LETTER
HELPS DUJUAN LOOPER IN SO MANY WAYS
AND TOUCH YOUR HEART AS WELL AS HE
DOES MINE THANK YOU HONORABLE
JUDGE ELISSA F CADISH

EXHIBIT “8”

Dear Your Honor,

My name is Misty Harris. I'm Dajuan Loper's Cousin. I'm writing to you as a supporter for Dajuan. I've known him all his life, and I know he is a good human being.

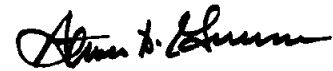
I also know that what he did ~~wasn't~~ ^{was wrong}, and I'm sure he knows it was wrong as well. He had time (being in jail for two years) to think about what he did, and to be honest, I'm sure he apologized for what he did, and I know he is very remorseful for what he has done.

I do want to say again that Dajuan is good human being. I know this because he lived with my family for years and was always there when we all needed him. My aunt always had a chance to talk to him by phone and told him to be prayerful which he has. He has become a brand new person.

I guess what I want to ask of you is to be fair (firm of course, but fair). He's had a long time to think and reflect about what he did to get himself put in there in the first place.

I believed he has learned his lesson, and he will think twice before he does something like this ever again. I'm sure he'll never do anything like this again, because I as well as the rest of my family will be there to make sure he is guided in the right direction.

Thank You,
Misty Harris



CLERK OF THE COURT

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C279379, C279418

DEPT. VI

10 vs.

11 DUJUAN DON LOOPER,
12 Defendant.

13
14 BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE
15 MONDAY, APRIL 28, 2014

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **SENTENCING**

18 **APPEARANCES:**

19 For the State:

MICHELLE FLECK, ESQ.
Chief Deputy District Attorney

20
21 For the Defendant:

MELINDA M. WEAVER, ESQ.

22 **ALSO PRESENT:**

23 Victim Speakers

CHARLOTTE TODD
AVA MARIA YOUNG
CHARDAE TODD

24
25 RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

Monday, April 28, 2014 at 11:53 a.m.

THE COURT: Okay, where is the DA?

MS. WEAVER: I think she went to get the victim witnesses.

THE COURT: Okay.

MS. WEAVER: Let me double check on that.

THE COURT: Good, no she appears to be right out there. Why don't we go off until they come in the room.

[Off the record at 11:53]

[On the record at 11:54]

THE COURT: Let's go back on the record.

THE COURT RECORDER: We're on.

THE COURT: Okay. Now we're on page 5, State versus Looper. Go ahead and stand. Okay. Good morning, state appearances. Or yeah, it's still barely morning, go ahead.

MS. WEAVER: Good morning, Your Honor, Melinda Weaver appearing on behalf of Mr. Looper.

MS. FLECK: And good morning, Your Honor, Michelle Fleck for the State.

THE COURT: Okay. So this is the time set for entry of judgment and imposition of sentence. Is there any legal cause or reason why judgment should not be entered at this time?

MS. WEAVER: No, Your Honor.

THE COURT: By virtue of your plea of guilty I hereby adjudicate you guilty of count 1, attempt sexual assault with a minor under 14 years of age, a felony, count 2, battery constituting domestic violence strangulation, a felony, and count 3,

1 possession of visual presentation depicting sexual conduct of a child, also a felony.

2 State did retain the right to argue at sentencing today. There is notice
3 of victim speakers. I would also note I did receive and read the sentencing
4 memorandum submitted by the defense, as well as the psychosexual evaluation that
5 I received. State.

6 MS. FLECK: Thank you, Your Honor. Your Honor, today I'm going to be
7 recommending on count 1, 8 to 20, so 96 months to 240 months. On count 2, the
8 maximum, which would be the 19 to 60 months. I'd ask that run consecutive to
9 count 1. And on count 3, the maximum 24 to 72 months, also to run consecutive.

10 Judge, I think that this case screams maximums as loud as possible for
11 any case. The Defendant received every possible benefit that he would have been
12 entitled to by the plea. And frankly the only reason that the plea went down the way
13 that it did is because the victim Chardae in this case was so traumatized and has
14 been through so much since this happened that to put her through a trial was nearly
15 impossible.

16 When she came in for preliminary hearing she looked at the Defendant
17 through the corridor and immediately collapsed. She then was put into the hospital.
18 She's attempted suicide. She's gone through bouts of drug abuse. She has been
19 able recently to start to pick herself up and to try to move on with her life. But a trial
20 would have been or could have been devastating to this child. And that's the only
21 reason that I was willing to give any kind of negotiation to the Defendant in this case.

22 The facts are so completely egregious. He lived with these children.
23 He was dating their mother, Charlotte, obviously became somewhat of a father
24 figure or role model to her children. She worked nights and so the Defendant would
25 take care of the children.

1 He came up with this kind of game that was kind of a way to get the
2 kids to drink and make them do juice shots. And whoever could do them the
3 quickest or could win these competitions they would get an award. They would get
4 a prize, like she could have a DJ for her birthday party or something like that. On
5 the night that the incident occurred she will tell you that she started to feel kind of
6 wheezy from these juice shots.

7 The Defendant says in his evaluations that he doesn't have anything to
8 do with drugs. And that's absolutely not true. There would have been witnesses to
9 have said, if he had testified to say that, that he had procured GHB within the
10 timeframe around this crime. I had the cups tested that were used to take these
11 shots but as we know GHB is the one drug that has a short lifespan so nothing
12 came back.

13 However all indicators of some sort of GHB type administration
14 occurred within Chardae. She became sleepy. She became groggy. She couldn't
15 remember what was going on. She couldn't -- she had lost control of her faculties.
16 And the next thing that she knew she woke up, her panties were down, they were
17 wet. She went back to sleep.

18 Around the time that she goes to sleep her mom comes home from
19 work, and you know, her sixth sense starts to go off. I wonder if my boyfriend is
20 cheating on me. So she goes to look through his phone and sure enough she sees
21 a vagina. So as if that wasn't shocking enough, upon closer look she sees her
22 child's bedding and her child's pajamas. So she realizes that the vagina in the
23 picture is that of her child's. And the Defendant's fingers are opening her.

24 There was a huge domestic at that point in time where the Defendant
25 took not only his phone but also his girlfriend's phone, broke them, and then put

1 them in the toilet so that hopefully all of that -- all of those pictures would be
2 destroyed. The domestic continued. He wouldn't let them get help. He was
3 battering Charlotte in front of both of her children. And ultimately Chardae was able
4 to call the police.

5 When the police arrive the phones were broken. He had successfully
6 ruined the phones and destroyed the evidence. However as luck would have it the
7 night before Mr. Looper had one of his friend install the new cool iCloud. So when
8 they opened the iPad all of the data that was in the phones opened up into the iPad.
9 And sure enough there is the same pictures that Charlotte saw. The Defendant has
10 since admitted to taking the pictures.

11 Chardae will tell you that -- well actually I'm not sure what she'll tell you,
12 but I'll tell that when she went to Desert Willow she got into counseling and she
13 started to remember and have flashbacks of things that the Defendant did to her that
14 evening which were not charged. But she had a lot more memory that she did when
15 she was first interviewed. And there was a second interview of her done. And she
16 remembered the Defendant trying to sexually assault her.

17 So, you know, it just -- his actions in this case run the gamut. And then
18 you look at his criminal history going from thefts, conspiracy to commit robbery,
19 other instances of physical abuse where he's got a gross misdemeanor for the
20 attempt battery with substantial bodily harm. So you know, theft crimes, crimes of
21 violence, and now sexual crimes, and then sexual crimes on a child. Absolutely he
22 is a threat to society. He obviously is not interested in contributing in any
23 meaningful way. And, you know, for those reasons and all of the reasons that you'll
24 hear from the three speakers today I would ask that you max him out on each
25 charge and run them consecutive.

1 And I think that that the first speaker today is going to be Charlotte
2 Todd.

3 THE COURT: Okay, she's -- they're going to go last, correct?

4 MS. FLECK: Oh, okay.

5 THE COURT: Okay.

6 MS. WEAVER: Thank you, Your Honor.

7 THE COURT: Can I just ask before I move on?

8 MS. FLECK: Sure.

9 THE COURT: There's a case pending with a -- at least -- this was showing a
10 pending case for theft and insurance fraud.

11 MS. FLECK: That's through the AG's office and so I'm not sure what's going
12 on. I don't know if they've tabled that until this over, or if he's taken some kind of a
13 negotiation.

14 THE COURT: And there is one case being dismissed.

15 MS. FLECK: Yes, that's correct. He got into a fight with another prisoner in
16 jail and that's -- that doesn't amount to much, so that one we're willing to dismiss.

17 THE COURT: Okay.

18 MS. FLECK: Thank you.

19 THE COURT: Thank you.

20 Mr. Looper, anything you'd like to tell me today?

21 THE DEFENDANT: Yes, Your Honor, I give my deepest regrets for what I've
22 done. I give my apologies to Charlotte, Chardae, and they family for any stress and
23 pain that I've put them through. And I've taken this time to become a better
24 person. And I'll submit with that.

25 THE COURT: Okay, counsel.

1 MS. WEAVER: Thank you, Your Honor. In Mr. Looper's words he has taken
2 this time to be a better person. He has spent over two years in jail at this point or
3 close to two years, I apologize, 800 days.

4 THE COURT: Uh-huh.

5 MS. WEAVER: During this time he's been exploring his spirituality and he's
6 become closer to his family. Mr. Looper has a very large extended family, many of
7 which are here in the courtroom today, including his Aunt Regina and his cousins.
8 His Aunt Regina raised him. These are people that would provide him a stable
9 atmosphere once he leaves prison. They have expressed that he's more than
10 willing to live them and that they trust him.

11 In addition you noted that you had received the sentencing report and
12 the psychosexual evaluation, conducted by Dr. Harter. Dr. Harter conducted and
13 extensive interview with Mr. Looper and found that he was not a high risk to reoffend
14 in the sexually -- I'm sorry, in a sexual offense. He has no prior history of engaging
15 in any sexual offense and he's a man in his 30s.

16 When it comes to his relationship with Charlotte, which was his
17 domestic partner at the time, it was contentious relationship. There was a lot of
18 fights and there was a lot of mutual fights. In this case Mr. Looper has admitted that
19 what he did was wrong. He has admitted taking the picture of Chardae. And he's
20 also admitted to engaging in combat with Charlotte. However he's extremely
21 regretful of his actions. This was a scenario that was prompted by the contentious
22 nature of their relationship.

23 He's fully committed to being a better person. He is going to have his
24 opportunities to come out of prison and get employment. Mr. Looper has made
25 contact with his old contacts in the body guard field and they are more than happy to

1 hire him back. He wants to continue on his career of amateur boxing and then go
2 on to professional boxing. Mr. Looper has a lot of opportunities ahead of him and
3 bringing him back out into the world where he can make amends for what he did is
4 what he would most like to do at this point. He realizes what he did was wrong.
5 He's deeply regretful. He's found his spirituality. And he's had over two years of
6 time at CCDC and Nellis to think about what he's done. And he is committed to
7 doing what's right.

8 He has his family's support. You've read the letters from his family
9 saying that he has expressed remorse, that he is committed to being a better
10 person. He does not want to have any future instances of sexual or violent behavior
11 that bring him back to this courtroom. He is committed to doing what's right in the
12 future. And I think that if you listen to Mr. Looper's statement he is committed to
13 making himself a better person.

14 THE COURT: Okay. Thank you. Let's get the victim speakers. And they'll
15 just come up right there.

16 MS. FLECK: Okay. Charlotte Todd.

17 THE MARSHAL: If you could just remain standing for a second. Raise your
18 right hand and face that gentleman right there.

19 **CHARLOTTE TODD**

20 [having been called as a victim speaker and being first duly sworn, testified as
21 follows:]

22 THE CLERK: Thank you. You may be seated. Please state your complete
23 name, spelling both your first and last name for the record.

24 THE VICTIM SPEAKER: Charlotte, C-H-A-R-L-O-T-T-E, Todd, T-O-D-D.

25 THE CLERK: Thank you.

1 THE COURT: Go ahead, Ms. Todd.

2 THE VICTIM SPEAKER: I just want to first start by saying that when I initially
3 came to the court today I brought my daughter by the door. Because last time she
4 was in front of the door she collapsed and I wanted to make sure she was able to
5 come in the court. Mr. Looper looked at her and I and wink and stuck his tongue
6 out. And there was other witnesses, and this was today.

7 THE COURT: Okay.

8 THE VICTIM SPEAKER: So for someone to be remorseful, looking, and
9 winking, and sticking their tongue out, and blowing kisses, I don't feel like that's very
10 remorseful. I just want to start out by saying that.

11 THE COURT: Thank you. Go ahead.

12 THE VICTIM SPEAKER: I'm here two and half years later because this is
13 really important to me for me to be here to show -- to just show what my kid has
14 been through, my family. I just want to say that I feel like I'm living a nightmare.
15 And I feel like I'm burning in hell and I want to wake up. And I would do anything in
16 the world to take back what he did to my daughter, my son as well as -- my son
17 Atlantis. And I would take back anything for Chardae and also my son, because
18 they've both been through a lot. I literally would rather have him burned me alive
19 then him do this to my child. And I would do anything to take the pain and suffering
20 that he's caused my daughter, taking her innocence away and completely has
21 changed her as a person.

22 The primitive acts that he did -- he premeditated these things. He
23 planned this. It wasn't just something that he, you know, popped up and did one
24 day. He planned this before I went to work that day. He planned -- he went to the
25 grocery store, got the stuff to make the drinks. He planned this. There was also

1 supposed to be another little girl spending the night at my house. He kept asking
2 me can she stay. I said no because I was working and I didn't want the kids to wake
3 me up in the morning. So there could have possibly been another child in another
4 family as well. I just want that to be known as well.

5 You know, what he did to my daughter for his own sick twisted
6 pleasures will forever affect my daughter first and foremost, my son, and me and my
7 entire family. This is like a death in my family. We deal with it every day and we
8 have to deal with it for the rest of our lives. Even though Dujuan has been in prison
9 for -- or court -- or jail for two year while the court process has been taking place, we
10 as a family have been struggling in our lives due to his actions, physically,
11 emotionally, spiritually, and financially and we still are.

12 Previous to all this happening I trusted Dujuan with my children and
13 they loved him and they trusted him. And they looked up to him like a father figure.
14 He was supposed to be the person to protect them besides me as their mother. He
15 lived in the home with my children and I. Out of any place in the world my kids
16 should feel safe there. I did the best I could be to protect them and I wasn't able to
17 protect her.

18 My daughter is a very sweet, innocent child. She gave me no problems
19 before this. She's compassionate. She had many friends. I had her when I was
20 very young and she was a very good baby and a very kid. And my son I would say
21 also looked up to Dujuan as a father figure as well. I just I know that.

22 The incident this happened on the evening I went to work. I came
23 home and I didn't know anything initially had happened. I ended up finding out
24 about the incident looking through the email like Michelle said. At first I didn't know
25 it was -- as far I didn't know it was my daughter. And I figure it out and it was my

1 worst nightmare. And at that point I was praying to God it wasn't my 13-year old
2 daughter and also that the pics weren't from Dujuan. Unfortunately it was her and
3 he was the one who had violated her.

4 Initially she said that he gave her several drugs. She got drugged. She
5 got sick dizzy and felt like her insides were turning out. He didn't stop with one or
6 two drinks or even three. She was throwing up until he sent my son to bed. And
7 then she was throwing up and she said she didn't -- he sent her to bed just throwing
8 up. And he didn't care that she was sick or feeling that way.

9 He premeditively [sic] did this by saying it was a game and it was just a
10 juice rush. She said her eyeballs were feeling like she was going to -- they were
11 going to pop out. She cried out to her brother to help her and she was scared. Like
12 I said he sent my daughter to her room and my son to bed. My daughter could have
13 been killed by that drug. I could have lost my child -- my only daughter through this
14 sick plan. And I just think about what if I would have came home to a dead child.

15 After my daughter had been violated I tried calling the police. He
16 tackled me. He had my phone. He was holding me down. And I was holding it for
17 dear life. And my child witnessed him choking me until I passed out and he drug me
18 into another room. The last thing I heard before he put me out were the screams of
19 my kids: Please don't kill my mom. I'm sure this will be forever embedded in their
20 brains for life. He held me down for hours. He took my phone. All he cared about
21 is his reputation and also him losing me.

22 He told me -- he didn't care about my daughter, not what my son had
23 witnessed or what he did in front of my kids or even if he killed my daughter. During
24 the time he held me hostage with my kids in the home Dujuan didn't have any
25 remorse. He was telling me -- he told me it's not as bad as it looks. And just don't

1 tell her to just not tell her, like I'm supposed to just forget about it. And he said he
2 didn't care about going to jail because he'll get right back out and he would come
3 after me and my kids.

4 After hours on end he started calling his friends saying he would get a
5 gun and he had something to take care of. And he telling -- crying to me, telling me
6 he was going to kill himself and me and he couldn't live because of his reputation
7 and him losing me. He didn't care about me, my kids, he didn't care about anything
8 else. It was all about him. My kids ended up finding a phone in the house and they
9 ended up calling the police. And if they didn't I don't know if I would even be here
10 today.

11 The police came and made me feel as I was being dramatic and in a
12 fight. It was humiliating for me. It's humiliating to have for my kids and my family
13 that they came and made it like I was crazy and because they didn't actually see the
14 pictures And they thought that we just got in a fight or something like that.

15 Finally I got the pics pulled up -- the pictures pulled up. And all the
16 police -- after my daughter has already been violated it's like she was violated again
17 by everyone seeing these pictures. You know, everyone came in looking at the
18 pictures and then there was the investigators that came in and the forensic people.
19 And those pictures are never going to leave my mind. As hard as I try to forget, they
20 will never leave my mind.

21 Proceeding that my daughter had to go under a rape examination in the
22 hospital where a stranger she didn't know violated her again. She was never
23 sexually active before then. That was her first experience. And also my son got
24 questioned. And he was only 9. He was confused. And I understand all this was to
25 help my daughter, but Dajuan created this. This is something that should have

1 never happened.

2 My mother Ava and family came out to help me and my children,
3 leaving their jobs and their lives behind. I was literally sick. I could barely leave my
4 bed. So this affected their lives and financial situations as well. I fell apart. I
5 wanted so hard to be strong for my kids and I couldn't. I couldn't eat. I couldn't
6 sleep. I couldn't go to work. Before this I had perfect credit. My finances were
7 order -- were in order. Everything that I worked so hard for pretty much went down
8 the drain. And from this I suffer like severe anxiety. I take Xanax for that. And I just
9 have to work very hard just every day just to be a normal person.

10 At first after this happened my daughter was shutting off to everyone.
11 She would shut off to everyone and she had several breakdowns. She couldn't
12 focus in school and was not doing well. She turned into self-medicating herself to
13 block out the pain, also disrespecting herself to numb the pain. She was running
14 away due to confusion, self-mutilating herself, having severe nightmares and
15 flashbacks.

16 There was a day that she tried to commit suicide and she wasn't in
17 good spirits. And we all, you know, were around her as a family. She went in the
18 bathroom. She cut herself probably about 40 times with a knife and covered herself
19 in a blanket and came and sat back down. And my son realized there was blood
20 seeping through blanket and asked her what was going on. And I opened the
21 blanket and she was bleeding. And we had to hold her down and call the
22 ambulance. I could have lost my only daughter. She was basically so hurt that she
23 didn't want to live anymore.

24 They took her to the hospital and they treated her. And when she was
25 good enough to leave the regular hospital she went to inpatient treatment, long term

1 for 7 months at Desert Willow. She's an innocent victim who was locked up and
2 treated like a criminal. She missed 7 months of her childhood. She missed
3 Halloween, Thanksgiving, Christmas, her birthday, my brother's -- her brother's
4 birthday. My son also missed out on being with his sister.

5 She suffers from posttraumatic stress disorder, severe depression all
6 from what Dujuan did to her. They also administered her with several medications,
7 Prozac, Trazodone to sleep and Vistaril. These medication she most -- she may
8 likely be on forever for depression and severe posttraumatic stress disorder.

9 After leaving inpatient treatment she went to outpatient care. She sees
10 a psychiatrist once a month, a therapist twice a week. Since then she's went back
11 to the hospital and transported back to inpatient twice. So she's been there three
12 times, once long term and twice short term with the support of the therapist the
13 psychiatrist, our church, everything.

14 This is also a financial burden to me. She's had 6 ambulance rides, 3
15 to the hospital, 3 to treatment center. I have to pay these hospital bills that when
16 she goes to the hospital. I have no insurance. I'm paying for this on top of missing
17 work to go to her therapy and going to the hospital. And this is like a daily thing.

18 All I can do and my family can do is do the best we can to make sure
19 that I can provide the best life possible for my children after this -- after what Dujuan
20 has done, which I feel he has no remorse for at all. My kids will never be the same
21 and I will never be the same. He basically took my heart and my soul from me.
22 That's my daughter and when she hurts I hurt for her.

23 My daughter calls -- comes to me and cries to me and asks me why.
24 Why did he do it? Or why -- what did she do to deserve it. And I tell her nothing.
25 She did nothing wrong. She said she was good to Dujuan she didn't deserve it.

1 Sometimes my son sleeps in front of her door to protect her even when
2 no one is there. Because he was there the night that Dajuan violated her. And my
3 son told me he feels guilty that even though it's not his fault that he didn't protect
4 her.

5 She has flash blacks. She suffers from the posttraumatic stress
6 disorder and she has severe anxiety. It's hard for her to do simple things.

7 Dajuan has no remorse. In the preliminary hearing he was also sticking
8 out his tongue, blowing kisses and winking as well when he pled guilty the first time
9 in front of everyone.

10 Since he's been in jail they -- his family has called CPS on me. After
11 they called CPS on me they came to try to get his truck and his -- one of the family
12 members said: How did you like CPS coming to your house? Also my house has
13 two bullet holes. And this just so happens to be in front -- before all his court dates
14 something happens. They shot my house. And I live in a very nice neighborhood
15 where there's no shooting occur. He tries to -- they try to scare me to come -- not to
16 come to court. My car has been keyed and also there's been people that come to
17 my job that he's associate with to try and threaten me.

18 I just ask that he stays in prison for as long as possible just for my
19 daughter to have enough time to grow into a woman. She needs that to feel safe.
20 She's scared to death he'll come after her or myself and my son. She's scared now
21 even though he's locked up. And I can't imagine if he got out how she would feel. I
22 feel like the plea he took was a slap on the wrist even if he does the maximum time.
23 I feel like he thinks it's a joke. He has no remorse. I feel like he'll do it again. I feel
24 like he's done it before. And I feel like he is a sociopath. He chose this. Nobody
25 else chose this. He made the decision to do this.

1 My daughter has a life sentence because of him. She will be changed
2 forever. I'm grateful that she's alive and that she's doing as well as she's doing
3 considering all that she's been through. And I'm also glad I found out when I did
4 because I feel like if I didn't find out that soon that it would have never stopped or I
5 don't know what would have happened. Who knows if my kids didn't call the police
6 if I would even be sitting here.

7 I just feel like nobody knows but him, God, and whatever flashbacks my
8 daughter has of what happened in the room that night. I believe that he did more
9 than what was just on those pictures and that was horrible enough. And it's been
10 two years and we're still suffering and I beg that he gets the max amount of time.
11 And I appreciate you listening to me. Thank you.

12 THE COURT: Okay.

13 MS. FLECK: The next speaker will be Ava Young.

14 THE MARSHAL: If you could, ma'am, right here. Remain standing, raise
15 your right hand. Face that gentleman right there for me.

16 **AVA MARIA YOUNG**

17 [having been called as a victim speaker and being first duly sworn, testified as
18 follows:]

19 THE CLERK: Thank you.

20 THE VICTIM SPEAKER: Thank you.

21 THE CLERK: Please be seated. Please state your complete name, spelling
22 both your first and last name for the record.

23 THE VICTIM SPEAKER: Ava Maria Young. A-V-A, M-A-R-I-A, Y-O-U-N-G.

24 THE CLERK: Thank you.

25 THE COURT: Go ahead ma'am.

1 THE VICTIM SPEAKER: Okay. To the most Honorable Judge in the Clark
2 County system in the State of Nevada, did you ever wake up horrified? I was
3 January 9th of 2012. I couldn't get to Las Vegas quick enough in my drive, wishing I
4 was there every moment of that drive. The devastation is unforgettable.

5 January 9th, 2012 in reference to the impact of the event including
6 sexual assault, battery, coercion force, strangulation, kidnapping, child neglect,
7 sexual assault on a 13 year old, lewdness with a minor, drugging a minor to sexual
8 assault and produce pornography, it was a game to Dajuan Looper. He doesn't
9 care about anyone. Dajuan had it planned to take advantage of Chardae thinking
10 he could get away with what he terms he did nothing, strangling Charlotte, holding
11 hostage Chardae and Atlantis as they watched their mother Charlotte being abused
12 when she found the pornography photos on Dajuan Loopers phone. Once she
13 determined the photos were of her daughter Chardae, Defendant DuJuan Looper,
14 the victim, Charlotte Todd, Chardae Todd and Atlantis, Chardae's little brother, at
15 the time he was 9 years old.

16 The impact, it affected my husband and I. I think I put 15,000 miles on
17 my car just driving from here to Phoenix for about two years. Chardae stayed at the
18 treatment facility, the Willow Treatment facility in Las Vegas. I went out and
19 purchased her new clothes, which of course she wasn't allowed anything with belts
20 or ties, or it had to be generic clothing as a prisoner would wear.

21 My daughters incurred a lot of medical bills, which she didn't owe
22 anyone at the time of this incident. She's financially strapped. She had leased a
23 home that he was to work and help pay for on the lease, which she got stuck with.

24 The impact of these crimes committed by Dajuan Looper has caused
25 the innocence pulled out of my granddaughter. Chardae is not seeing her -- out of

1 my granddaughter Chardae. And not seeing Chardae's eyes light up as they once
2 did with excitement is a lost to me. I lost the innocence of Chardae. I lost the little
3 girl I once had up until January 9, 2012. Chardae is no longer able to confide in me
4 as she had done since she was born and I cut her umbilical cord bringing her into
5 the world.

6 Chardae is at a distance that I have not been able to reclaim. Trusting
7 anyone is something Chardae is struggling with. To me it feels like she is on the
8 other side of the door and I can't get in. She has the key locked away. I miss
9 knowing her heart and the sweetness of her laughter, and her eagerness to show up
10 in the world and the confidence she once had.

11 The impact this has had also has affected the whole family, it's
12 devastating, including Charlotte -- Chardae's relationship with her little brother
13 Atlantis. The closeness they once had is gone. Atlantis is there for all the events
14 including -- that have happened on January 9th and after, including sitting on the
15 sofa noticing the blood dripping from the blanket after Chardae stabbed herself.
16 While Chardae was in rehab facility she wrote a letter to her brother apologizing for
17 putting him through the trauma along with her. Atlantis is a victim of the past events
18 and I wonder how he will see himself as a boy and a man and what his role is to be
19 in life.

20 The shame that Charlotte is feeling, also withdrawing from her family,
21 feeling guilt, degradation, violated, and hurting for her daughter. For Chardae being
22 violated was the closest form of human contact. For Chardae it is a shame that this
23 experience that Dajuan Looper chose to act upon has taken Chardae's freedom to
24 explore from her innocence is now tainted with the memory of these experiences. I
25 want my family back. Dajuan stole that love and the confidence they once had from

1 us.

2 Chardae has been imprisoned, taken away from the life she once had
3 without a date of being let out since January 12th of 2012. In addition to being
4 locked up in the treatment facility that is cold, sleeping on a floor, not feeling safe on
5 a bed, Chardae since January 12 is breaking down on these dates, including her
6 birthday which is January 20 approximately three weeks, two to three weeks after
7 this event. Including her suicide attempt from the trauma and the memories,
8 Chardae missed being present with her family on Christmas, birthdays,
9 Thanksgiving and the memories these -- she holds are not going away.

10 Chardae's pain hasn't healed with time. It has been buried showing up
11 in -- as hypersensitive, producing very powerful mood swings at the most
12 inopportune times. Also causing problems with nightmares, sleeping, eating,
13 concentrating, focusing, and doing school work, doing activities in her daily life has
14 been affected.

15 In addition to Chardae used to have a great social life with many
16 girlfriends, which she no longer has the closeness of friends as she did. Chardae
17 has been medicated with no date to an end.

18 This offer, the plea bargain, was given so that Chardae would not have
19 to be exposed to additional trauma of a trial on top of what has been given and to
20 begin to move forward with her healing. It's been like holding her finger down on a
21 red hot stove burner and not letting up for two years and more, further depleting
22 Chardae's self-worth and all that are involved. It is like Chardae was put into prison
23 in a box, tainted, labeled, and judged.

24 I am disgusted that this has taken this long and angry that it ever
25 occurred. Dajuan doesn't care about himself or anyone. He thinks he has control

1 and this is a joke. Ask any psychologist about the mind of someone that like Dajuan
2 Looper wants to control with fear, aggression, rape, pornography. He doesn't have
3 a connection with the victim. It's all about the control he has. Dajuan has
4 something missing within himself. He will do this again I feel or worse. If you give
5 him a chance he has nothing to lose, because he doesn't care.

6 For me it's a sense -- for me a sentence to giving Dajuan 20 years to
7 life would be appropriate, by this allowing Chardae to become an adult and establish
8 herself in the world along with Atlantis and Charlotte. They deserve the freedom to
9 feel free. Chardae, Atlantis, and Charlotte had the right to live a free life without
10 looking over their shoulders wondering when he will show up unannounced. And
11 allow them to heal as much as they can to hopefully begin to live a life without fear
12 and begin to be worthy again.

13 Life for us has not gone on as it used to be. Close your eyes and
14 imagine yourself at 13 years old and being carefree. At this time I cannot convey
15 my deepest regret that Chardae, Atlantis, and her mother experience January 9th of
16 2012 that shattered the innocent lives of these children that has been -- has not
17 been healed, has not healed the very core of who they were.

18 I myself have always looked up to the judicial system in the United
19 State of America to uphold the law that we are governed by in our day to day living.
20 That would leave all to live in peace and experience the best lives possible and to
21 our becoming of our innocence. And now is the time when an adult man, Dajuan
22 Looper, took upon himself to manipulate a well thought out plan to take advantage
23 of Chardae leaving her brother Atlantis and her mother Chardae the victims of these
24 disgusting crimes that didn't go as he planned but caused great trauma to all
25 involved.

1 I would like to see Chardae to move forward into her adult life
2 establishing herself without any distractions or any worries of any further distraction
3 in finding her way by holding DuJaun Looper to the maximum length of time by law
4 according to the negotiated state -- that has been stated, negotiation that has been
5 stated. Thank you for listening.

6 THE COURT: Thank you.

7 MS. FLECK: And, Your Honor, finally Chardae Todd will speak.

8 THE COURT: Okay.

9 THE MARSHAL: Just remain standing for a second. Raise your right hand.
10 Face that gentleman right there.

11 **CHARDAE TODD**

12 [Having been called as a witness and being first duly sworn, testified as
13 follows:]

14 THE CLERK: Thank you. You may be seated. Please state your complete
15 name, spelling both your first and last name for the record.

16 THE VICTIM SPEAKER: Chardae Todd, C-H-A-R-D-A-E, T-O-D-D.

17 THE COURT: Okay. Go ahead.

18 THE VICTIM SPEAKER: Today it actually took me like a lot to come up here,
19 because I wasn't going to come up here at first. But I knew that if I -- I knew that if I
20 didn't come up here that he would see me as a weak person. And I'm not going to
21 be that weak person. I'm not. I'm not going let him terrorize my life any more.

22 I just would like you to know that like every day, every day since that
23 day I've been struggling with my emotions. I can't be happy, sad, or mad. I'm -- it's
24 not -- I can't pick an emotion to be. I don't know what to feel anymore.

25 In January 2012 my whole life crashed because of one person. His

1 name is Dajuan Looper. A few weeks later after the incident got expelled from
2 school because I started heavily smoking marijuana and was careless and didn't
3 care what happened to me, because I felt worthless. I just wanted to forget what
4 happened to me. I just wanted to leave -- or I didn't want to think about it anymore.
5 So I turned to drugs.

6 Since I got expelled I had to go to Southwest Behavior School where I
7 got into more drugs, such as different types of pills, any pills that I could get my
8 hands on basically, because I couldn't take it. I just --to be so honest like I didn't
9 know that somebody that I trusted like that could do something like that to me,
10 especially when I didn't do anything to him. I just wanted to escape from the
11 nightmares. I felt that if I didn't have something to get high off of I would keep
12 reliving that night over and over and over again.

13 I started hanging around really bad people. I hated my house. Every
14 time I looked around I just kept thinking about him, about him violating me over and
15 over. I wouldn't even talk to my mom because I felt like it was her fault because he
16 was her boyfriend. I constantly stayed out of my house for 4 to 5 days at a time.
17 One day my mom came and got me from where I was at. I was done running. I was
18 tired of doing drugs, tired of fighting my memory of that night. I just wanted to end it
19 all, end my life, just break away from everything.

20 I told my mom I wanted to kill myself. She slept in the room with me
21 that night to make sure I wouldn't -- didn't do anything. So I woke up before she
22 was -- and looked over to make sure she was asleep and I got up that morning and I
23 cut my arms more than a hundred times, which was recorded at the treatment
24 center, the scars. She -- he was haunting me. My brother came upstairs and saw
25 me. He automatically told my Aunt and my Aunt woke up my mom. Everything

1 started going fuzzy. All I could see were fireman, a lot of them standing around me.

2 Next thing you know I'm in a treatment center. I was so scared, around
3 people I didn't know, the smell of the hospital while I'm sitting there in a gown. I
4 spent months in there. And the worst part was the -- were the flashbacks that I had
5 of the night that he assaulted me. Since I was on so many drugs before I got in
6 there I didn't have so many flash -- intense flashbacks of that night. I couldn't even
7 sleep without medicine until the end of 2013. I was scared to fall asleep because I
8 thought he would come for me again.

9 After I got out of being in treatment for 7 months I was okay for a month
10 on my own. But I couldn't handle all the pressure of being back in the real world.
11 So when I got out I went right back. Then after that I went back after three weeks
12 again because of a misunderstanding. Now I've been out of treatment for 8 months.
13 I take depression medication every day when I wake up.

14 But I don't think I will ever forget those three horrible days in my life,
15 being assaulted, seeing my mom hurt, and not able to do anything. I will never
16 forgive him, ever. The most hurtful thing is I trusted him for 3 years. I felt like he
17 was a stepdad to me. I would have never thought he would ever do something like
18 to me. What did I do to him? Why? That's all I want to know. Why did he do this to
19 me? I know inside my heart that I'm scarred for life. This will never leave my
20 memory. Once all this is over I hope I could actually be normal and live a normal life
21 knowing that he will be put away for a long time. But I know that I will be forever
22 damaged because of one person.

23 I wish could give -- could have gave -- oh, I was going to say I wish I
24 could have gave this statement in person but I'm actually doing it so.

25 THE COURT: Okay.

1 THE VICTIM SPEAKER: But please just I don't want anyone else to get hurt.
2 I -- it's not about me. It's just like I don't understand why a person would let a
3 person like that back into the world after they hurt somebody in my family like that. I
4 just hopefully after this is done I could actually try to be happy and not scared of him
5 getting out any time soon and just not thinking about going back and forth to court
6 and coming back here and having to see his face.

7 I would just like him to know that I'm not scared of him. I'm not scared
8 of him anymore. I'm not -- I'm not to be scared of him and I'm not going to let him
9 be in jail satisfied with seeing my tears. And that's all. Thank you.

10 THE COURT: Thank you. Right, obviously the crimes that bring us here
11 today are very, very serious. And as we've heard your actions that you chose to
12 take have caused a lot of effects on a whole lot of people. And I hope that you use
13 the time in prison to improve yourself and make sure that nothing like this happens
14 again.

15 I will impose Administrative Assessment Fee of \$25, DNA was
16 previously taken so it's waived, Domestic Violence Fee of \$35. On count 1
17 sentencing you 240 months in Nevada Department of Corrections, minimum parole
18 eligibility after 96 months and ordering restitution of \$5,320.80. On count 2, 60
19 months in Nevada Department of Corrections, minimum parole eligibility after 19
20 months consecutive to count 1. On count 3, 72 months in Nevada Department of
21 Corrections, minimum parole eligibility after 19 months consecutive to counts 1 and
22 2.

23 In addition I'm imposing a special sentence of lifetime supervision to
24 commence after any period of probation or any term of imprisonment and period of
25 release upon parole, which begins upon release from incarceration. Additionally

1 you'll be required to register as a sex offender within 48 hours of release from
2 custody. Credit for time served?

3 MS. WEAVER: I have it 800 days.

4 MS. FLECK: I thought it -- yeah, I had 809, but --

5 MS. WEAVER: I'll go with 809 then.

6 THE COURT: 809 days credit for time served.

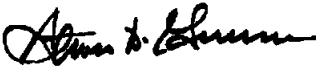
7 [Hearing concluded at 12:52 a.m.]

8 * * * * *

9 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video
10 proceedings in the above-entitled case to the best of my ability.

11 
12 _____
13 Jessica Kirkpatrick
14 Court Recorder/Transcriber
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JOCP



CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

DUJUAN DON LOOPER
#1871455

Defendant.

CASE NO. C279379-1
C279418
DEPT. NO. VI

JUDGMENT OF CONVICTION

(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crimes of COUNT 1 – ATTEMPT SEXUAL ASSAULT WITH A MINOR UNDER FOURTEEN YEARS OF AGE (Category B Felony) in violation of NRS 193.330, 200.364, 200.366, and COUNT 2 – BATTERY CONSTITUTING DOMESTIC VIOLENCE - STRANGULATION (Category C Felony) in violation of NRS 200.481, 200.485 33.018, and COUNT 3 – POSSESSION OF VISUAL PRESENTATION DEPICTING SEXUAL CONDUCT OF A CHILD (Category B Felony) in violation of NRS 200.700, 200.730; thereafter, on the 28th day of April, 2014, the Defendant was present in court for sentencing with his counsel MELINDA WEAVER, ESQ., and good cause appearing.

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses and, in addition to the \$25.00 Administrative Assessment Fee, \$35.00 Domestic Violence Fee and Restitution in the amount of \$5,320.80 as to Count 1, the Defendant is sentenced

1 to the Nevada Department of Corrections (NDC) as follows: As to COUNT 1 - TO A
2 MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole
3 eligibility of NINETY-SIX (96) MONTHS; as to COUNT 2 - TO A MAXIMUM of SIXTY
4 (60) MONTHS with a MINIMUM parole eligibility of NINETEEN (19) MONTHS, Count
5 2 to run CONSECUTIVE to Count 1; and as to COUNT 3 - TO A MAXIMUM of
6 SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility of NINETEEN (19)
7 MONTHS, Count 3 to run CONSECUTIVE to Counts 1 & 2 with EIGHT HUNDRED
8 NINE (809) days Credit for Time Served.
9
10

11 FURTHER ORDERED, a SPECIAL SENTENCE of LIFETIME SUPERVISION
12 is imposed to commence upon release from any term of imprisonment, probation or
13 parole. In addition, before the Defendant is eligible for parole, a panel consisting of
14 the Administrator of the Mental Health and Development Services of the Department
15 of Human Resources or his designee; the Director of the Department of Corrections or
16 his designee; and a psychologist licensed to practice in this state; or a psychiatrist
17 licensed to practice medicine in Nevada must certify that the Defendant does not
18 represent a high risk to re-offend based on current accepted standards of assessment.
19
20

21 ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender
22 in accordance with NRS 179D.460 within FORTY-EIGHT (48) HOURS after any
23 release from custody. DNA Fee is WAIVED.

24 DATED this 23 day of April 2014.

25
26
27 ELISSA CADISH
28 DISTRICT JUDGE

IN THE SUPREME COURT OF THE STATE OF NEVADA

DUJUAN DON LOOPER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65608

FILED

DEC 11 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

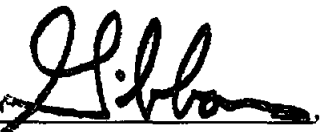
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of attempted sexual assault of a minor under fourteen years of age, battery constituting domestic violence (strangulation), and possession of a visual presentation depicting sexual conduct of a child. Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

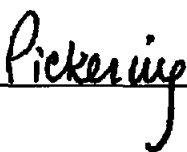
Appellant Dujuan Don Looper contends that the district court abused its discretion by imposing maximum consecutive sentences because it based its sentencing decision on emotion and failed to consider "clear mitigating circumstances." Looper also contends that his sentence constitutes cruel and unusual punishment. We disagree.


Looper digitally penetrated his girlfriend's 13-year old daughter while she was sick, took pictures of his attack, and strangled his girlfriend when she discovered the pictures. At sentencing, the district court stated that it had read Looper's sentencing memorandum and psychosexual evaluation. The victims gave statements which described the incident's impact on their family. When the victims concluded, the district court thanked them, said "ok," and imposed sentence; nothing in the record suggests that the court's sentencing decision was based upon

suspect evidence or was improperly influenced by emotion. Looper's consecutive prison terms of 96-240 months, 19-60 months, and 19-72 months, fall within the parameters provided by the relevant statutes, NRS 193.330(1)(a)(1); NRS 200.366(3)(c); NRS 200.485(2); NRS 200.730(1), and Looper has not demonstrated that these statutes are unconstitutional. See *Chavez v. State*, 125 Nev. 328, 347-48, 213 P.3d 476, 489-90 (2009). The sentence imposed is not so disproportionate to the gravity of the offenses as to shock the conscience, see *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979); see also *Harmelin v. Michigan*, 501 U.S. 957, 1000-01 (1991) (plurality opinion). We conclude that the district court did not abuse its discretion, see *Parrish v. State*, 116 Nev. 982, 988-89, 12 P.3d 953, 957 (2000), and we

ORDER the judgment of conviction AFFIRMED.¹


Gibbons C.J.


Pickering J.


Saitta J.

¹Looper's fast track statement does not comply with the formatting requirements of NRAP 3C(h)(1) and NRAP 32(a)(4)-(5) because it does not have one-inch margins on all sides and contains a footnote which is not in the same size font as the text of the brief. We caution counsel that future failure to comply with the applicable rules when filing briefs in this court may result in the imposition of sanctions. See NRAP 3C(n).

cc: Hon. Elissa F. Cadish, District Judge
Patti, Sgro & Lewis
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

21

FILED

JAN 16 2015

CLERK OF COURT

Case No. C279379
Dept. No.

IN THE 8TH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

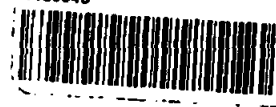
DUJUAN DON LOOPER
Petitioner,

v.

PETITION FOR WRIT
OF HABEAS CORPUS
(POSTCONVICTION)

STATE OF NEVADA
Respondent.

C-12-279379-1
PWHC
Petition for Writ of Habeas Corpus
4426640



INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

- 1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: HIGH DESERT STATE PRISON CLARK COUNTY
- 2. Name and location of court which entered the judgment of conviction under attack: 8TH JUDICIAL DISTRICT COURT CLARK COUNTY
- 3. Date of judgment of conviction: MAY 29, 2014
- 4. Case number: C279379
- 5. (a) Length of sentence: COUNT I (96-340) MONTHS COUNT II (19-60) COUNT III (19-72)

RECEIVED

JAN 16 2015

CLERK OF THE COURT

24
96

1 (b) If sentence is death, state any date upon which execution is scheduled:.... N/A

2 6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

3 Yes No X.....

4 If "yes," list crime, case number and sentence being served at this time:

5 N/A

6

7 7. Nature of offense involved in conviction being challenged: ATTEMPT SEXUAL ASSAULT MINOR

8 UNDER C14)- BATTERY DOMESTIC VIOLENCE - STRANGULATION - POSSESSION VISUAL OF CHILD

9 8. What was your plea? (check one)

10 (a) Not guilty

11 (b) Guilty X.....

12 (c) Guilty but mentally ill

13 (d) Nolo contendere

14 9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a

15 plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was

16 negotiated, give details: N/A

17

18 10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)

19 (a) Jury N/A

20 (b) Judge without a jury N/A

21 11. Did you testify at the trial? Yes No

22 12. Did you appeal from the judgment of conviction? Yes X..... No

23 13. If you did appeal, answer the following:

24 (a) Name of court: NEVADA SUPREME COURT

25 (b) Case number or citation: 65609

26 (c) Result:

27 (d) Date of result:

28 (Attach copy of order or decision, if available.)

1 14. If you did not appeal, explain briefly why you did not: N/A

2

3

4 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any
5 petitions, applications or motions with respect to this judgment in any court, state or federal? Yes No ~~.....~~ X

6 16. If your answer to No. 15 was "yes," give the following information:

7 (a) (1) Name of court: N/A

8 (2) Nature of proceeding: N/A

9

10 (3) Grounds raised: N/A

11

12

13 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

14 (5) Result: N/A

15 (6) Date of result:

16 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

17

18 (b) As to any second petition, application or motion, give the same information:

19 (1) Name of court: N/A

20 (2) Nature of proceeding: N/A

21 (3) Grounds raised: N/A

22 (4) Did you receive an evidentiary hearing on your petition, application or motion? Yes No

23 (5) Result: N/A

24 (6) Date of result: N/A

25 (7) If known, citations of any written opinion or date of orders entered pursuant to such result:

26 N/A

27 (c) As to any third or subsequent additional applications or motions, give the same information as above, list
28 them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action taken on any
2 petition, application or motion?

3 (1) First petition, application or motion? Yes No X.....

4 Citation or date of decision:

5 (2) Second petition, application or motion? Yes No X.....

6 Citation or date of decision:

7 (3) Third or subsequent petitions, applications or motions? Yes No X.....

8 Citation or date of decision:

9 (e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you
10 did not. (You must relate specific facts in response to this question. Your response may be included on paper which
11 is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in
12 length.)..... N/A

13
14 17. Has any ground being raised in this petition been previously presented to this or any other court by way of
15 petition for habeas corpus, motion, application or any other postconviction proceeding? If so, identify: NO

16 (a) Which of the grounds is the same: N/A

17
18 (b) The proceedings in which these grounds were raised: N/A

19
20 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this
21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your
22 response may not exceed five handwritten or typewritten pages in length.) N/A

23
24 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional pages you have attached,
25 were not previously presented in any other court, state or federal, list briefly what grounds were not so presented,
26 and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your
27 response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not
28 exceed five handwritten or typewritten pages in length.) N/A

1
2 19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing
3 of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in
4 response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the
5 petition. Your response may not exceed five handwritten or typewritten pages in length.) NO
6

7 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment
8 under attack? Yes No ☒

9 If yes, state what court and the case number: N/A
10

11 21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on
12 direct appeal: ANTHONY P. SGRO ESQ MELINDA A
13 WEAVER ESQ 720 S. 7TH ST LAS VEGAS, NEVADA 89101
14

15 22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under
16 attack? Yes No ☒

17 If yes, specify where and when it is to be served, if you know: N/A
18

19 23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the
20 facts supporting each ground. If necessary you may attach pages stating additional grounds and facts
21 supporting same.
22
23
24
25
26
27
28

1 (a) Ground ONE: INEFFECTIVE ASSISTANT OF
2 COUNSEL
3
4

5 Supporting FACTS (Tell your story briefly without citing cases or law.): PETITIONER'S
6 COUNSEL WAS INEFFECTIVE IN REPRESENTING
7 HIM. SELDOM VISITING HIM. FAILING TO FILE
8 PROPER EXCULPATORY MOTIONS. COUNSEL DID
9 NO INDEPENT INVESTIGATING, FAILED TO
10 FILE A HABEAS IN LIMINE CHALLENGING THE
11 SUFFICIENCY OF THE EVIDENCE. FAILED TO
12 USE ALL AVAILABLE RESOURCES TO ASSIST
13 IN GETTING A "FAIR SENTENCE" FOR
14 PETITIONER.

15 PETITIONER ASKED COUNSEL TO GO OUTSIDE
16 THE BOX OF THE POLICE REPORT AND TALK
17 DIRECTLY TO MEDICAL EXPERTS, PSYCHIATRIST,
18 SECURE MEDICAL RECORDS, FORMALLY CHALLENGE
19 ANY FORENSIC EVIDENCE ON ITS PROBATIVE
20 VALUE. COUNSEL REFUSED TO LISTEN TO
21 PETITIONER OR HIS VIEWS. FURTHER
22 COUNSEL FAILED TO SECURE ALL EXCULPATORY
23 EVIDENCE WHICH WOULD HAVE BEEN VERY
24 VALUABLE TO PETITIONER'S DEFENSE.

25 1) LOOPER'S ATTORNEY'S JOB DURING
26 PROCEDURES WAS PROFESSIONALLY UNREASONABLE
27 " WAS PROFESSIONALLY UNREASONABLE. ANY OTHER
28

GROUND I CONTINUED

1 NORMAL ATTORNEY WOULD HAVE DONE
2 A BETTER JOB.

3 2) ATTORNEY'S JOB PERFORMANCE
4 "RESULTED IN PREJUDICE" TO
5 PETITIONER, IF COUNSEL HAD
6 NOT BEEN SO TERRIBLE, THE OUTCOME
7 OF SITUATION MIGHT HAVE BEEN
8 DIFFERENT.

9 SEE: STRICKLAND V. WASHINGTON
10 466 U.S. 668, 687 (1984)
11 PETITIONER DUJUAN DON LOOPER REQUESTED
12 COUNSEL TIME AND TIME AGAIN TO
13 LISTEN TO HIS VIEWS, TO GO TOO
14 THE HOSPITAL, TO EXAMINE THE STATE-
15 MENTS A LITTLE CLOSER. TO INVESTIGATE
16 THE CRIME SCENE PERSONALLY, SLOW
17 THINGS DOWN.

18 MAKE SURE "EVERYTHING" FROM THE
19 PROSECUTION WAS PROCURED.

20 SPEAK TO OTHER COUNSEL WHO HAD
21 DEALT WITH THESE TYPES OF CASES.

22
23 THE DEFENSE ATTORNEY MUST INVESTIGATE
24 THE PROSECUTOR'S CRIMINAL CHARGES
25 AGAINST THE CLIENT. IF HE DOESN'T,
26 THEN THE COURT WILL DECIDE IF IT
27 MEANT HE WAS DOING A REALLY BAD
28

1 JOB AS AN ATTORNEY, AND
2 THAT THIS CAUSED PREJUDICE
3 AGAINST THE DEFENDANT,
4 WILLIAMS V. TAYLOR
5 529 U.S. 362, 363 (2000)

6
7 BECAUSE LOOPER'S ATTORNEY REFUSED
8 TO INVOLVE HIM AT ALL IN HIS
9 DEFENSE, SELDOM SPOKE OR VISITED
10 HIM. IGNORED ALL ANY AVENUES
11 OF APPROACH AND "INFORMATION"
12 HE SOUGHT TO OFFER, HE WAS
13 HEAVILY ISOLATED FROM THE
14 JUDICIAL PROCEDURES IN HIS CASE,
15 INVOLVING THE PROCEDURAL MATTERS
16 AND SUBSTANTIAL ISSUES THAT WERE
17 VERY COMPLEX. PETITIONER, FURTHER
18 ASSERTS HE WAS DENIED THE RIGHT
19 TO EFFECTIVE REPRESENTATION DUE
20 TOO THE WHOLLY INADEQUATE ACTIONS
21 OF COUNSEL. FURTHER, COUNSEL'S
22 INADEQUATE ACTIONS COMPORTED TO
23 NOTHING MORE THAN A VIOLATION
24 OF LOOPER'S DUE PROCESS RIGHTS.

25
26 TO SHOW PREJUDICE THE DEFENDANT
27 MUST SHOW THAT, IF HIS ATTORNEY
28

HAD DONE A BETTER JOB
OF INVESTIGATING THE CRIMINAL
CHARGES AGAINST HIM, THE RESULT
MIGHT HAVE BEEN DIFFERENT.

WIGGINS V. SMITH,
539 U.S. 510 534 (2003)

COUNSEL WAS TOTALLY INEFFECTIVE
DURING PLEA NEGOTIATIONS, RESULTING
IN LOOPER BEING PREJUDICED AND
RECEIVING MAXIMUM CONSECUTIVE
SENTENCES ON ALL COUNTS.
COUNSEL IN LOOPER'S CASE CANNOT
EXPLAIN THE REASONING STRATEGY
AND THE COURT CANNOT FIND THAT
THE DECISIONS DURING PLEA NEGOTIATIONS
WERE PART OF COUNSEL'S STRATEGY.

1) THE PROSECUTION RETAINED THE
RIGHT TO ARGUE JEOPARDIZING
ANY PLEA NEGOTIATED.

2) COUNSEL TOLD PETITIONER HE
WOULD RECEIVE MINIMUM
SENTENCING, BECAUSE OF LACK
OF CRIMINAL RECORD, "FORGETTING"

1 TOO TELL HIM ANY NEGOTIATED PLEA
2 HAD TO BE ACCEPTED BY THE JUDGE.
3

4 3) THAT THE JUDGE DID NOT HAVE
5 GO BY ANY PLEA UNLESS IT
6 WAS BINDING.
7

8 4) BECAUSE PETITIONER WAS GREEN
9 WHEN IT CAME TO THE LAW
10 COUNSEL TOOK TOTAL ADVANTAGE
11 OF HIM.
12

13 5) COUNSEL PUT FORTH "NO" ENERGY
14 IN CHALLENGING THE SUFFICIENCY
15 OF THE EVIDENCE IN EACH AND
16 EVERY ELEMENT AND EACH
17 AND EVERY COUNT.
18

19 PETITIONER'S SENTENCING STRUCTURE
20 IS EQUIVALENT TO A LIFE SENTENCE
21 AT HIS AGE. FURTHER, IT WILL
22 NEVER BE COMPLETED AS HE WILL
23 RECEIVE TIER III STATUS, LIFETIME
24 REGISTRATION AND LIFETIME SUPERVISION.
25 BECAUSE HE RECEIVED (3) FELONY
26 CONVICTIONS ALONE IN THIS ONE CASE
27 HE IS ELIGIBLE FOR HABITUAL CRIMINAL
28

1 STATUS FOR ANY FUTURE FELONY
2 CONVICTION; RESULTING IN LIFE
3 WITH OR WITHOUT.

4 BECAUSE OF THE NATURE OF HIS
5 CONVICTIONS, HE IS ALSO SUBJECT
6 TOO WEARING A (GPS) MONITOR
7 FOR LIFE.

8 THE ATTORNEY NEVER EXPLAINED
9 ANY OF THIS TOO LOOPER.

10 PALMER V. STATE: DEMANDS THAT
11 DEFENDANT UNDERSTOOD THE NATURE
12 AND CONSEQUENCES OF HIS GUILTY
13 plea.

14
15 IN THIS SHOW OF "DEAL" OR NO
16 "DEAL" LOOPER RECEIVED NO DEAL.

17
18 THE UNITED STATES SUPREME COURT
19 SAID plea BARGAINS HAVE BECOME
20 SO CENTRAL TO THE ADMINISTRATION
21 OF THE CRIMINAL JUSTICE THAT DEFENSE
22 COUNSEL HAVE RESPONSIBILITIES IN
23 THE plea BARGAIN PROCESS THAT MUST
24 BE MET TO RENDER THE ADEQUATE
25 ASSISTANCE OF COUNSEL THAT SIXTH
26 AMENDMENT REQUIRES OF THE
27 CRIMINAL PROCESS AT "CRITICAL STAGES".

1 BECAUSE OURS IS FOR THE MOST
2 PART A SYSTEM OF (PLEAS) NOT
3 A SYSTEM OF TRIALS, IT IS
4 INSUFFICIENT TO SIMPLY POINT
5 TO THE GUARANTEE OF A FAIR
6 TRIAL AS A BACK STOP THAT
7 INOCULATES ANY ERRORS IN THE
8 PRE TRIAL PROCESS.

9 MISSOURI V. FRYE

10 132 S.Ct. 1399 182 L.Ed. 2d 379

11 (2012)

12
13 COUNSEL FOR LOOPER SHOW ABSOLUTELY
14 NO LOYALTY TO HIM, DID NOT
15 SPEAK THE TRUTH TO HIM ABOUT
16 WHAT HE WAS FACING, PLACED HIM
17 IN A 'SINK OR SWIM' SITUATION,
18 AND GAVE HIM LESS THAN 5--- MINUTES
19 TO MAKE AN INFORMED PLEA
20 BARGAIN DECISION.

21 YES THE PSYCHO SEXUAL EVALUATION
22 RATED HIM LOW RISK TO RE-OFFEND,
23 AND YES HE LACKED CRIMINAL CONVICTION
24 BACK GROUND. PAROLE AND PROBATION
25 RECOMMENDED A FAIR SENTENCING
26 STRUCTURE (SEE: PSI). BUT THE
27 FACT THAT WERE COUNTS THAT COULD

1 HAVE BEEN CHALLENGED, PROSECUTORIAL
2 OPENINGS TO ARGUE, NO CONCRETE
3 SENTENCE STRUCTURE. NO "STRONG
4 ENERGIES TO ELIMINATE MORE
5 COUNTS. NO AGGRAVATING CIRCUMSTANCES
6 THE JUDGE WOULD TAKE INTO
7 CONSIDERATION BEFORE SENTENCING
8 LOOPER EXPLAINED, LEFT HIM WIDE
9 OPEN.
10 ANY SEASONED ATTORNEY WITH AN
11 DUNCE OF COURT SAVVY AND WISDOM
12 WOULD HAVE SEEN THE TRAIN COMING
13 DOWN TRACKS HEADED STRAIGHT FOR HIS
14 CLIENT, . .

15 THE COURT SAID THAT
16 THE DEFENSE ATTORNEY FAILURE TO
17 INVESTIGATE WAS INEFFECTIVE ASSISTANCE
18 OF COUNSEL BECAUSE 1) DID NOT TALK
19 TO OTHER ATTORNEYS IN THE OFFICE
20 ABOUT THE CASE, 2) DID NOT INVESTIGATE
21 THE BACKGROUND OF THE TWO COMPLAINING
22 WITNESSES, AND 4) DID NOT REQUEST
23 ANY PHYSICAL OR PSYCHOLOGICAL EXAMINATIONS
24 OF THE VICTIM(S) OR DEFENDANT,
25 THE ATTORNEY'S FAILURE TO INVESTIGATE
26 LEFT THE DEFENDANT WITHOUT ANY
27 DEFENSE TO THE CRIMINAL CHARGES

1 AGAINST HIM

2 WARNER V. STATE,

3 102 NEV. 637-638. (1986)

6 COUNSEL WAS INEFFECTIVE DURING

7 THE SENTENCING HEARING AND

8 BASICALLY ABANDONED PETITIONER.

9 PETITIONER HAD ENORMOUS FAMILY

10 SUPPORT CLOSER THAN MOST. LOOPER

11 LET IT BE KNOWN TO COUNSEL THAT

12 A FEW FAMILY LEADERS WANTED

13 TO ADDRESS THE COURT ABOUT HIS

14 CHARACTER, COUNSEL IGNORED THAT

15 REQUEST.

16 FURTHER, COUNSEL FAILED TO INTERVIEW

17 THE VICTIMS. HAD COUNSEL DONE SO

18 HE WOULD HAVE "EXACTLY" WHAT THEIR

19 FEELINGS WERE AND WHAT IMPACT

20 IT WOULD HAVE HAD ON THE COURT'S

21 SENTENCING DECISION.

22 PETITIONER WAS HEAVILY PREJUDICED

23 BY COUNSEL'S ERROR.

25 DEFENDANT HAS AN UNQUALIFIED

26 RIGHT THAT EXPRESSES 'LOYALTY'

27 TO SAID DEFENDANT, THE RIGHT

TO COUNSEL IS [ALSO] TO
EFFECTIVE ASSISTANCE OF
COUNSEL"

CUYLER V. SULLIVAN, 100 S.Ct
1708 (1980);

AND FRAZIER V. U.S. 18 F.3d
778 (9TH CIR. 1994).

A LOT OF ISSUES WERE PUT
BEFORE THE COURT BY THE VICTIM'S
MOTHER THAT NEEDED TO BE
PROBED BY COUNSEL CONCERNING
THE VEHICLE AND THREATS AND
OTHER ACCUSATIONS THAT IMPACTED
THE COURT'S SENTENCING DECISION.
COUNSEL SHOULD HAVE PRESERVED
THEM FOR THE RECORD AND DID
NOT MENTION THEM ON APPEAL.

THE ERRONEOUS ADMISSION OF
IRRELEVANT AND PREJUDICIAL EVIDENCE
MAY CONSTITUTE A FEDERAL DUE
PROCESS VIOLATION. SEE: ESTELLE
V. MCGUIRE SUPRA, 502 U.S. 62,
68-70.

THE PROSECUTOR WAS WELL AWARE
OF WHAT THE VICTIMS WERE

(9)

1 GOING TO SAY. HOWEVER, HE IS
2 NOT OBLIGATED TO ADVISE COUNSEL
3 ON COURT STRATEGY OR WISDOM.
4 COUNSEL COULD HAVE REQUESTED
5 A PRE-SENTENCE HEARING AND OR
6 FILED FOR DISCOVERY.

7 'ONE OF THE BIGGEST PARTS OF
8 COURT PROCEEDINGS IS THE SENTENCING
9 PHASE' . . .

10
11 (1) DEFENDANTS HAVE A SIXTH
12 AMENDMENT RIGHT TO EFFECTIVE
13 ASSISTANCE OF COUNSEL DURING
14 THE PLEA BARGAINING.

15 LAFIER V. COOPER,
16 132 S.Ct. 1376, 1384, 188
17 L. Ed. 2d 298 (2012)

18
19 (2) AND THERE IS A REASONABLE
20 PROBABILITY THAT THE DEFICIENT
21 PERFORMANCE PREJUDICED DEFENDANT
22 STRICKLAND V. WASHINGTON
23 466 U.S. 688

24
25 SEE: U.S. V. WITHERS
26 618, FED 3d 1008

1 STRICKLAND V. WASHINGTON

2 466 U.S. 668

3
4 HILL V. LOCKHART

5 474 U.S. 52

6
7 MATY LINSKY V. BUDGE

8 577 F. 3d 1083

9
10 UNDER THE SECOND PRONG,
11 A REASONABLE PROBABILITY
12 "MEANS" A PROBABILITY SUFFICIENT
13 TO UNDERMINE CONFIDENCE
14 IN THE OUTCOME.

15
16
17 PETITIONER ASKED COUNSEL TO FILE
18 A MOTION TO WITHDRAW THE plea.
19 COUNSEL SAID ITS POSSIBLE IT WOULD BE
20 INCLUDED ON APPEAL.

21 1) A DEFENDANT IS ALLOWED TO FILE
22 A MOTION TO WITHDRAW GUILTY
23 plea AFTER THE JUDGE HAS
24 ACCEPTED HIS plea BUT BEFORE THE
25 JUDGE HAS SENTENCED HIM; OR

26
27 2) AFTER THE JUDGE HAS SENTENCED
28

1 HIM. HART V. STATE, 116 NEU. 558,
2 562 (2000)

3
4 * IN NEVADA, A DEFENDANT IS NOT
5 ALLOWED TO APPEAL A GUILTY PLEA
6 AGREEMENT' BY GOING TO THE NEVADA
7 SUPREME COURT' AFTER THE JUDGE HAS
8 ACCEPTED THE DEFENDANT'S GUILTY PLEA
9 AND FILED A "JUDGEMENT OF CONVICTION".

10 MITCHELL V. STATE 109
11 NEU. 137 (1993)

12 CONCLUSION

13
14 COUNSEL HAS MISLED ITS CLIENT IN
15 EVERY SHAPE, FASHION AND FORM.
16 THE COURT CANNOT VIEW BLATANT VIOLATIONS
17 AS HARMLESS ERROR BECAUSE PETITIONER
18 WAS PREJUDICED.

19 THE UNITED STATES SUPREME COURT HAS
20 HELD THAT A STATE PRISONER MUST CITE
21 TO BOTH THE FEDERAL CONSTITUTION AND
22 SUPREME COURT IN HIS STATE APPELLATE
23 BRIEFS. THIS RULE IS STRICTLY ENFORCED.
24 IN DUNCAN V. HENRY, SUPRA 513 U.S. 364
25 A CALIFORNIA DEFENDANT ARGUED ON APPEAL
26 THAT THE TRIAL COURT HAD ABUSED ITS
27 DISCRETION UNDER EVIDENCE CODE SECTION

352 BY ALLOWING THE ADMISSION OF CERTAIN
EVIDENCE.

IN ARGUING THE PREJUDICE FLOWING FROM
THE ERROR, THE DEFENDANT RELIED SOLELY
ON THE STATE TEST FOUND IN PEOPLE V.
WATSON 46 CAL 2d 818 (1956). AFTER
THE NINTH CIRCUIT GRANTED RELIEF ON
FEDERAL DUE PROCESS GROUNDS, THE SUPREME
COURT SUMMARILY REVERSED SINCE THE
DEFENDANT * DID NOT APPRAISE THE STATE
COURT OF HIS CLAIM THAT THE EVIDENTIARY
RULING OF WHICH HE COMPLAINED WAS
NOT ONLY A VIOLATION OF STATE LAW,
BUT DENIED HIM DUE PROCESS OF LAW
GUARANTEED BY THE FOURTEENTH AMENDMENT.

MR. LOOPER'S CONSTITUTIONAL RIGHTS
UNDER THE DUE PROCESS CLAUSE OF
THE CONSTITUTION WERE TOTALLY VIOLATED
BY COUNSEL. UNDER THE UNITED STATE
SUPREME COURT TEST FOUND IN
STRICKLAND VS WASHINGTON PETITIONER'S
COUNSEL FAILED MISERABLY.

THE HIGHER COURTS REVERSE DAILY CASES
THAT HAVE - HEAVY VICTIM IMPACT -
BECAUSE THE LOWER COURTS ARE
EXPECTED TO SET ASIDE PERSONAL

1 FEELINGS AND "PROTECT THE RIGHTS
2 OF THE ACCUSED" AS WELL AS THE
3 VICTIM.

4 ONE SUCH CASE:

6 MCKINNEY V. REES

7 993 F.2d 1370 (9TH CIR. 1993) STATE

8 CONVICTED THE DEFENDANT WITH MURDERING
9 HIS MOTHER WHO DIED AFTER
10 HER THROAT WAS SLIT.

12 THE NINTH CIRCUIT REVERSED
13 THE DEFENDANT'S CONVICTION.

14 STATING AMONG OTHER THINGS:

15 HIS WAS NOT THE TRIAL PROMISED BY
16 THE CONSTITUTION OF THE UNITED
17 STATES, CONDUCTED IN ACCORDANCE
18 WITH CENTURIES - OLD FUNDAMENTAL
19 CONCEPTIONS OF JUSTICE. IT IS PART
20 OF OUR COMMUNITY' SENSE OF FAIR PLAY
21 THAT PEOPLE ARE CONVICTED OF WHAT THEY
22 HAVE DONE, NOT WHO THEY ARE.

23 BECAUSE HIS TRIAL WAS SO INFUSED WITH
24 IRRELEVANT, PREJUDICIAL EVIDENCE TO
25 BE FUNDAMENTALLY UNFAIR, MCKINNEY
26 IS ENTITLED TO THE CONDITIONAL
27 WRIT OF HABEAS CORPUS THAT THE

1 DISTRICT COURT AWARDED HIM.

2
3
4 THEREFORE, FUNDAMENTAL FAIRNESS
5 REQUIRES THE ABOLITION OF
6 PREJUDICE PETITIONER IS PRESENTLY
7 SUFFERING. THIS IS AN ACTUALITY
8 THAT THE LAW MUST ADDRESS.

9 ANYTHING SHORT OF ABDICATION WOULD
10 FURTHER A MANIFEST OF INJUSTICE.
11 "THE EFFECTIVENESS (IN ASSISTANCE)
12 OF COUNSEL" IS AN INDIVIDUAL'S
13 MOST FUNDAMENTAL RIGHT, FOR
14 WITHOUT IT EVERY OTHER RIGHT
15 PETITIONER HAS TO ASSERT
16 BECOMES AFFECTED . . .

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 1 day of the month of JANUARY 2015.

* *Supra* *Juan Don Looper #1120989*

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in District Court Case Number _____ Does not contain the social security number of any person.

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

_____, hereby certify pursuant to N.R.C.P. 5(b), that on this _____ day of the month of _____, 20____, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

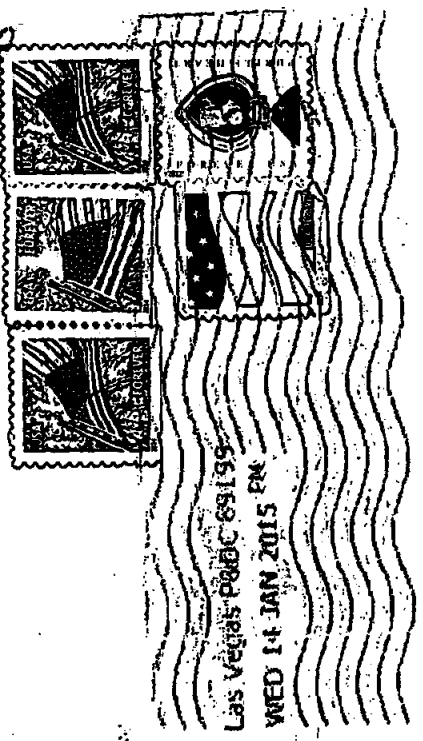
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

* *Supra* *Juan Don Looper #1120989*

High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

Du Juan Cooper
P.O. Box 650
Indian Springs, Nevada
89070-0650



CLARK COUNTY DISTRICT COURT
CLERK OF THE COURT
200 LEWIS AVE
LAS VEGAS, NEVADA 89155

LEGAL MAIL

CONFIDENTIAL

A. B. B. B.

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MASTER CALENDAR

FILE WITH

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FILED

DEPARTMENT VI
NOTICE OF HEARING

DATE 1/8/15 TIME 8:30 am
APPROVED FOR M2V

2015 JAN 23 A 9 20 AM

DISTRICT COURT

CLARK COUNTY, NEVADA

CLERK OF THE COURT

DUJUAN DON LOOPER,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: C-12-279379-1
Department 6

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on January 16, 2015. The Court has reviewed the Petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's Calendar on the 8th day of April, 2015, at the hour of 8:30 am o'clock for further proceedings.

CLERK OF THE COURT

JAN 23 2015

RECEIVED

District Court Judge

C-12-279379-1
DPWH

Order for Petition for Writ of Habeas Corpus
4427626



01-21-15A11:33 RCVD

SUPP
GAMAGE & GAMAGE
William H. Gamage, Esq.
Nevada Bar No. 009024
1775 Village Center Cir., Suite 190
Las Vegas, Nevada 89134
Telephone: (702) 386-9529
Facsimile: (702) 382-9529
Attorney for Petitioner


CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA)	CASE NO. : C-12-279379
Plaintiff,)	C-12-279418 (Consolidated)
vs.)	DEPT. NO.: VI
DUJUAN LOOPER)	PETITIONER'S SUPPLEMENT TO
Defendant,)	PETITION FOR WRIT OF HABEAS
)	CORPUS

PETITIONER'S SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS

COMES NOW, Petitioner DUJUAN LOOPER, by and through his undersigned counsel, William H. Gamage, Esq. of the law firm of Gamage & Gamage, and hereby files this Petitioner's Supplement to Petition for Writ of Habeas Corpus. In addition to all documents, pleadings, and oral arguments in this case, Petitioner asserts that he has been robbed of his Fifth, Sixth and Fourteenth Amendment rights. Accordingly, Petitioner brings the following claims:

- **GROUND ONE** – Violation Of Petitioner's 6th Amendment Right to Effective Assistance of Counsel During Plea Negotiations and Sentencing.
- **GROUND TWO** – Lifetime Supervision Statutes, in Conjunction with Each Other, are Unconstitutionally Vague in violation of the 5th and 14th Amendments.

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1 included in the original cases (excluding one count of misdemeanor domestic violence). PA010-
2 13.

3 On January 8, 2014, Looper pled guilty to:

- 4 • 1 count of Attempt Sexual Assault with a Minor Under Fourteen Years of Age (NRS
5 193.330, 200.364, 200.366);
- 6 • 1 count of Battery Constituting Domestic Violence - Strangulation (NRS 200.481;
7 200.485; 33.018); and,
- 8 • 1 count Possession of Visual Presentation Depicting Sexual Conduct of a Child (NRS
9 200.700, 200.730).

11 PA014-024. Concurrently, the State filed a Third Amended Complaint to reflect the charges in
12 the Guilty Plea Agreement. PA033-035. During the change of plea hearing, some confusion
13 existed as to whether a lifetime supervision sentence was required. However, the Court asked
14 Looper if he was aware that a lifetime supervision sentence was required to which he responded
15 "yes your honor". PA029-030.
16

17 On April 28, 2014, a sentencing hearing was held where the Court heard from Looper and
18 his counsel, the minor victim, her mother, and the minor victim's grandmother. Following
19 testimony, the Court sentenced Looper as follows:

- 20 • Count 1) – 96 months to 240 months (Nev. Dept. Corr. "NDC");
- 21 • Count 2) – 19 months to 60 months (NDC) (Consecutive to Ct. 1);
- 22 • Count 3) – 19 months to 72 months (NDC) (Consecutive to Ct. 1 and 2);
- 23 • 809 days credit for time served; and,
- 24 • LIFETIME SUPERVISION to commence upon release from any term of probation,
25 parole or imprisonment.

26 PA059-060 and PA061-062.
27
28

1 On May 23, 2014, the Judgment of Conviction was filed. PA061-062.

2 **ARGUMENT**

3 **GROUND ONE**

4 **LOOPER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL**
5 **FAILURE TO PROPERLY EXPLAIN AND TRANSMIT A PLEA OFFER IN**
6 **VIOLATION OF HIS 5TH, 6TH, AND 14TH AMENDMENT CONSTITUTIONAL**
7 **RIGHTS.**

8 The plea bargaining process is a critical stage of a criminal prosecution. *Iowa v. Tovar*,
9 541 U.S. 77, 81 (2004) and *Burger v. Kemp*, 483 U.S. 776, 803-804 (1987). Accordingly, the
10 Sixth Amendment applies to representation during the plea process. *Missouri v. Frye*, 132 S. Ct.
11 1399, 1405 (2012) and *Hill v. Lockhart*, 474 U.S. 52, 57 (1985).

12 The decision to plead guilty or contest a criminal charge is ordinarily the most important
13 single decision in any criminal case. *Boria v. Keane*, 99 F.3d 492, 496-497 (2nd Cir. 1996). This
14 decision must ultimately be left to the client's wishes. *Id.* The United States Supreme Court
15 noted the importance of plea negotiations when it stated in *Santobello v. New York*, 404 U.S. 257,
16 261 (1971):

17 Disposition of charges after plea discussions is not only an essential part of the process but
18 a highly desirable part for many reasons. It leads to prompt and largely final disposition
19 of most criminal cases; it avoids much of the corrosive impact of enforced idleness during
20 pre-trial confinement for those denied release pending trial; it protects the public from
21 those accused persons who are prone to criminal conduct even while on pretrial release;
and by shortening the time between the charge and disposition, it enhances whatever may
be the rehabilitative prospects of the guilty when they are ultimately imprisoned.

22 *Id.* The very nature of this process involves a *quid pro quo*: the government avoids the time and
23 expense of a trial and the defendant secures a more advantageous outcome. *U.S. ex rel. Caruso v.*
24 *Zelinski*, 689 F.2d 435, 438 (3rd Cir. 1982).

25 Failure of counsel to effectively advise a defendant of a plea offer from the government is
26 constitutionally deficient performance. *Frye*, 132 S. Ct. at 1407-1408 and *Caruso*, 689 F.2d at
27

1 438; *U.S. v. Blaylock*, 20 F.3d 1458, 1466 (9th Cir. 1994); *Ex parte Lemke*, 13 S.W.3d 791, 796
2 (Texas App., 2000); and, *Turner v. State*, 49 S.W.3d 461, 464-465 (Texas App., 2001).

3 “Under *Strickland v. Washington*, 466 U.S. 668, 687 (1984), an ineffective assistance
4 claim ‘has two components. First, the [petitioner] must show that counsel's performance was
5 deficient.... Second, the [petitioner] must show that the deficient performance prejudiced the
6 defense.’” *Tilcock v. Budge*, 538 F.3d 1138, 1146 (9th Cir. 2008).

7
8 In the *Hill* case, the United States Supreme Court addressed the test for ineffective
9 assistance of counsel set out in *Strickland* in the context of a guilty plea accepted by the
10 defendant. The Court in *Hill* held that the test for deficient performance in the plea process
11 remains the same as in a trial context. *Hill*, 474 U.S. at 59. The Court further held that the
12 prejudice element “focuses on whether counsel’s constitutionally ineffective performance
13 affected the outcome of the plea process.” *Id.* In this sense, the Court stated that the defendant
14 must show that but for counsel’s ineffectiveness, there is a reasonable probability that he would
15 not have pleaded guilty and would have insisted on going to trial. *Id.* The ineffectiveness alleged
16 in *Hill* was counsel’s incorrect advice regarding parole eligibility. *Hill*, 474 U.S. at 54-55.

17
18 In *Palmer v. State*, the Nevada Supreme Court remanded a petitioner back to the district
19 court for an evidentiary hearing as to whether the defendant was aware of the lifetime supervision
20 requirement before entering his plea. *Palmer v. State*, 118 Nev. 823, 831, n. 30 (2002). The Court
21 reasoned that because of its punitive and enduring effect, lifetime supervision is a direct
22 consequence of a guilty plea which a defendant pleading guilty must be aware. *Palmer* 118 Nev.
23 At 830. In remanding, the Nevada Supreme Court ruled that as the record below was silent with
24 respect to whether Palmer knew, in pleading guilty to a sexual offense, that he would be subject
25 to lifetime supervision; an evidentiary hearing was necessary in order to fully rule on his post
26 conviction petition. *Palmer*, 118 Nev. at 830-831.

1 Here, Looper's counsel was ineffective because he failed to fully inform him of the
2 following:

- 3 • The nature and requirements of registration as a sex offender as a consequence of
4 his plea to Counts 1;
- 5 • The consequences and procedural aspects of life-time supervision as a
6 consequence of his plea to Count 1; and,
- 7 • The extra added hurdles necessary for a child sex offender to obtain parole
8 through a medical and mental health assessment of risk to re-offend.
9

10 These failures to counsel Looper on critical components of his guilty plea agreement constitute
11 substandard performance and had Looper been properly counseled by his appointed attorney, he
12 would not have accepted the offer and went to trial. Thus, like the *Hill* case, Looper received
13 ineffective assistance of counsel in violation of his 5th, 6th, and 14th Amendment Rights.

14 JUSTIFICATION FOR EVIDENTIARY HEARING

15 "A petitioner for post-conviction relief is entitled to an evidentiary hearing only if he
16 supports his claims with specific factual allegations that if true would entitle him to relief."
17 *Thomas v. State*, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).
18

19 If given the opportunity, Looper will testify regarding the limited explanation given him
20 by trial counsel regarding the consequences of his plea. Further, Looper would testify that he was
21 given an inadequate amount of time to review his proposed plea agreement and to discuss the
22 terms of this agreement with his attorney. Moreover, Looper would testify that he was not advised
23 about what 'Lifetime Supervision' entailed, that 'Lifetime Supervision' was a direct consequence
24 of his plea, and that he would receive as a part of his sentence a special sentence of 'Lifetime
25 Supervision'. Furthermore, Looper would testify that he was not made aware of the added hurdles
26 he would have to cross in order to obtain parole. (ie: favorable evaluation that he does not pose a
27 high risk to re-offend).
28

1 An evidentiary hearing is needed to present evidence regarding the nature and
2 circumstances of how trial counsel inadequately counseled Looper regarding the terms of his plea
3 agreement. Further, an evidentiary hearing is needed to determine if Looper's Counsel adequately
4 explained the risks and specialized procedures regarding his eligibility to obtain parole at some
5 later date based upon a plea to a child sexual assault offense. Such evidence is necessary in order
6 for the court to determine if Looper was afforded constitutionally sufficient advise so that he
7 could intelligently and knowingly waive his important constitutional trial, appellate, and post
8 conviction rights in the context of the specialized sentencing procedures brought to bear in
9 pleading guilty to child sexual assault related charges.
10

11 There exists no information in the record to contradict these assertions because the nature
12 and scope of the discussions had by Looper and his trial counsel were only witnessed by each
13 other. Thus, Loopere is entitled to expand the record of this case to include his testimony and the
14 testimony of his trial counsel to support his claim.
15

16 GROUND TWO

17 **NRS 176.0931 – UNCONSTITUTIONALLY VAGUE**
18 **NRS 213.1243 - UNCONSTITUTIONALLY VAGUE**
19 **NRS 213.1255 – UNCONSTITUTIONALLY VAGUE**

20 **NEVADA'S LIFETIME SUPERVISION STATUTES, IN CONJUNCTION WITH ONE**
21 **ANOTHER, ARE UNCONSTITUTIONALLY VAGUE BECAUSE THEY PLACE AN**
22 **OFFENDER AT RISK OF PUNISHMENT FOR A CATEGORY B FELONY IF THEY**
23 **RESIDE WITHIN CERTAIN DISTANCES OF 'A PLACE' OR 'ACTUAL STRUCTURE'**
24 **THAT IS 'DESIGNED PRIMARILY FOR USE BY OR FOR CHILDREN'**

25 Nevada law requires that persons convicted of sexual assault against minors (or even
26 attempts related to this offense) be placed on lifetime supervision. *See* NRS 176.0931; NRS
27 213.107(6)(a) and (b); NRS 213.1243; and, NRS 213.1255. These statutes mandate that an
28 offender remain a certain distance away from a "place" or "actual structure", "that is designed
primarily for use by or for children." *See* NRS 213.1243(4) and (5) and NRS 213.1255(1)(a).
NRS 213.1243 reads in pertinent part:

1 NRS 213.1243 - Release of sex offender: Program of lifetime supervision; required
2 conditions of lifetime supervision; penalties for violation of conditions; exception to
3 conditions.

4 4. Except as otherwise provided in subsection 9, the Board shall require as a condition of
5 lifetime supervision that the sex offender, unless approved by the parole and probation
6 officer assigned to the sex offender and by a psychiatrist, psychologist or counselor
7 treating the sex offender, if any, not knowingly be within 500 feet of any place, or if the
8 place is a structure, within 500 feet of the actual structure, that is designed primarily for
9 use by or for children, including, without limitation, a public or private school, a school
10 bus stop, a center or facility that provides day care services, a video arcade, an amusement
11 park, a playground, a park, an athletic field or a facility for youth sports, or a motion
12 picture theater. The provisions of this subsection apply only to a sex offender who is a
13 Tier 3 offender.

14 5. Except as otherwise provided in subsection 9, if a sex offender is convicted of a sexual
15 offense listed in subsection 6 of NRS 213.1255 against a child under the age of 14 years,
16 the sex offender is a Tier 3 offender and the sex offender is sentenced to lifetime
17 supervision, the Board shall require as a condition of lifetime supervision that the sex
18 offender:

19 (a) Reside at a location only if the residence is not located within 1,000 feet of any
20 place, or if the place is a structure, within 1,000 feet of the actual structure, that is
21 designed primarily for use by or for children, including, without limitation, a public or
22 private school, a school bus stop, a center or facility that provides day care services, a
23 video arcade, an amusement park, a playground, a park, an athletic field or a facility for
24 youth sports, or a motion picture theater.

25 (b) As deemed appropriate by the Chief, be placed under a system of active
26 electronic monitoring that is capable of identifying his or her location and producing,
27 upon request, reports or records of his or her presence near or within a crime scene or
28 prohibited area or his or her departure from a specified geographic location.

(c) Pay any costs associated with his or her participation under the system of
active electronic monitoring, to the extent of his or her ability to pay.

8. Except as otherwise provided in subsection 7, a sex offender who commits a violation
of a condition imposed on him or her pursuant to the program of lifetime supervision is
guilty of a category B felony and shall be punished by imprisonment in the state prison for
a minimum term of not less than 1 year and a maximum term of not more than 6 years,
and may be further punished by a fine of not more than \$5,000.

NRS 213.1243 (4)(5) & (8) (emphasis added); NRS 213.1255 (1)(a); and *see* NRS 176.0931.

The void-for-vagueness doctrine operates to eliminate statutes that are repugnant to the
Due Process Clause of the 14th Amendment of the United States Constitution. *Silvar v. Eighth*
Judicial Dist. Court Ex rel. County of Clark, 122 Nev. 289, 293 (2006). A statute is deemed
unconstitutionally vague when 1) it fails to provide sufficient notice to a person of ordinary
intelligence of what is prohibited; and, 2) it lacks specificity, which encourages or fails to prevent

1 arbitrary or discriminatory enforcement. *Flamingo Paradise Gaming, LLC v. Chanos*, 124 Nev.
2 502, 510 (2009). Though challenged statutes are presumed valid, statutes warrant higher scrutiny
3 when they result in criminal penalties as opposed to civil penalties. *Id.* at 512, 553.

4 The first prong of the void-for-vagueness doctrine is met when a statute does not provide
5 adequate notice as to what is forbidden. *Silvar*, 122 Nev. at 293, 685. The Supreme Court has
6 held that individuals seeking to operate within the law "...are entitled to be informed as to what
7 the State commands or forbids." *Lanzetta v. New Jersey*, 306 U.S. 451, 53 (1939), quoted in
8 *Papachristou v. City of Jacksonville*. 405 U.S. 156, 162 (1972).

9
10 Likewise, the Nevada Supreme Court has held that a statute may be held
11 unconstitutionally vague if it imposes criminal sanctions on otherwise non-criminal activity.
12 *Sheriff, Washoe County v. Burdg.*, 118 Nev. 853, 857 (2002). Essentially, individuals should not
13 be frustrated in their attempts to conform their conduct to the contours of the statute. *Silvar*, 122
14 Nev. at 293. People should not be expected to "guess at the meaning of a statute." *Winters v. New*
15 *York*, 333 U.S. 507, 515 (1948)

16
17 The second prong of the void-for-vagueness doctrine is met when a statute fails to provide
18 law enforcement with enough specificity or minimal guidelines, which leads to arbitrary or
19 discriminatory enforcement. *See Winters v. New York*, 333 U.S. 507 at 515-16; *Sheriff, Washoe*
20 *County v. Burdg.*, 118 Nev. at 857; *Silvar*, 122 Nev. at 293. For example, when statutory
21 language fails to specify circumstances in which a person can be arrested, a statute may be held
22 unconstitutionally vague. *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. at 295. Under such
23 circumstances, law enforcement has too much discretion to define its own guidelines for arrest,
24 which can potentially lead to "absurd results." *Id.* Though the Nevada Supreme Court does not
25 impart "impossible standards" for statutory language, the Nevada Supreme Court mandates that
26 statutes employ linguistic precision when possible or practical. *Kolender v. Lawson*, 461 U.S.
27 352, 361 (1983).
28

1 This Court should find the Lifetime Supervision statutes complained of by Looper
2 unconstitutionally vague as they meet both prongs of the void-for-vagueness doctrine. Since NRS
3 176.0931, NRS 213.1243, and NRS 213.1255 carry severe criminal penalties, the statute warrants
4 high scrutiny in a vagueness analysis. *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502
5 (2009).

6 Here, the language used to thrust Looper into category B felony liability is vague and fails
7 to put any reasonable person on notice as to what a place or structure is “that is designed
8 primarily for use by or for children.” See NRS 213.1243(4) and (5) and NRS 213.1255(1)(a).
9 While the legislature tried to provide illustrations of such places, even these suggestions give rise
10 to confusion.² Counsel respectfully submits the following non-exhaustive list related to what may
11 or may not be a place or structure “that is designed primarily for use by or for children:
12

- 13 • A church (assuming it is not also a daycare or school for children) is designed primarily
14 for both children and adults. Churches are places that families are to come together to
15 worship;
16
- 17 • A State or National Park (Lake Mead Recreation Area, Redrock Recreational Area, etc.) is
18 a “park” within the language delineated by the statutes. Further, it is a place designed for
19 use by children and adults. As such, State or National parks are designed primarily for the
20 use by families which include children;
- 21 • A Multi-Use stadium such as the Thomas & Mack center is at times an athletic field, an
22 ice rink, a concert venue, or theatre with the entertainment “designed primarily for use by
23 or for children”. For example, does this make the premises off limits if the current
24 entertainer is Justin Bieber (whose fan-base is primarily teenagers); and,
25

26 ² “a public or private school, a school bus stop, a center or facility that provides day care services,
27 a video arcade, an amusement park, a playground, a park, an athletic field or a facility for youth
28 sports, or a motion picture theater.” NRS 213.1243(4)(5) and NRS 213.1255 (1)(a).

- A movie theatre inside a licensed gaming establishment.

The language “primarily” included in the statute is subject to varying interpretations and emphasis which renders these statutes (leading to severe criminal penalties) void for vagueness. Reasonable people could differ as to whether the word “primarily” refers to the builder’s original intent or to whether the current use of the place or structure means that it is “designed primarily for use by or for children. This vague aspect to this very troubling set of statutes leaves offenders and law enforcement in a quandary as to whether a crime has been committed. Consequently, the imposition of Lifetime Supervision upon Looper, as special sentence, was unconstitutional; especially in light of the fact that trial counsel did not inform him what Lifetime Supervision was and how it affected his life.

JUSTIFICATION FOR EVIDENTIARY HEARING

“A petitioner for post-conviction relief is entitled to an evidentiary hearing only if he supports his claims with specific factual allegations that if true would entitle him to relief.” *Thomas v. State*, 120 Nev. 37, 44, 83 P.3d 818, 823 (2004).

This claim amounts to a review of this Court of the language of the statutes complained of to render an at-law decision. Accordingly, this Court could reach its decision without an evidentiary hearing.

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CONCLUSION

Petitioner respectfully requests that this court vacate his conviction and afford him effective assistance of counsel to effectively represent Looper at all critical stages of his criminal case.

Dated this 14th day of April, 2016.

Respectfully submitted

/s/ William H. Gamage, Esq.

William H. Gamage, Esq.
Nevada Bar No. 009024
1775 Village Center Cir., Suite 190
Las Vegas, Nevada 89134
Attorney for Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of April, 2016, I served a true and correct copy of the
above and foregoing **PETITIONER'S SUPPLEMENT TO PETITIONER'S WRIT OF**
HABEAS CORPUS first class mail addressed to the following:

CLARK COUNTY DISTRICT ATTORNEY

200 Lewis Avenue
Las Vegas, Nevada 89101
Facsimile (702) 477-2975
Attorney for the State of Nevada

NEVADA ATTORNEY GENERAL

Adam Paul Laxalt
100 North Carson Street
Carson City, Nevada 89701-4717

DUJUAN LOOPER

High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070-0650

/s/ William H. Gamage, Esq.

Employee of Gamage & Gamage

APP

GAMAGE & GAMAGE

William H. Gamage, Esq.

Nevada Bar No. 009024


1775 Village Center Cir., Suite 190

Las Vegas, Nevada 89134

Telephone: (702) 386-9529

Facsimile: (702) 382-9529

Attorney for Petitioner



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA

Plaintiff,

vs.

DUJUAN LOOPER

Defendant,

CASE NO. : C-12-279379

C-12-279418 (Consolidated)

DEPT. NO.: VI

**PETITIONER'S APPENDIX IN SUPPORT
OF POST CONVICTION WRIT OF
HABEAS CORPUS (Vol. 1)**

COMES NOW Defendant DUJUAN LOOPER by and through counsel William H. Gamage, Esq. of Gamage & Gamage and hereby submits **PETITIONER'S APPENDIX IN SUPPORT OF POST CONVICTION WRIT OF HABEAS CORPUS (Vol. 1)**. Paez submits Petitioner's Appendix and asks the Court to consider these documents as evidence in support of his request for relief.

Dated this 18th day of April, 2016.

Respectfully submitted

/s/ William H. Gamage, Esq.

William H. Gamage, Esq.

Nevada Bar No. 009024

1775 Village Center Cir., Suite 190

Las Vegas, Nevada 89134

Attorney for Petitioner

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CLARK COUNTY DISTRICT ATTORNEY
200 Lewis Avenue
Las Vegas, Nevada 89101
Facsimile (702) 477-2975
Attorney for the State of Nevada

/s/ William H. Gamage, Esq.
Employee of Gamage & Gamage


CLERK OF THE COURT

1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,
11
12 Plaintiff,

13 -vs-

14 DUJUAN LOOPER,
15 #1871455

16 Defendant.

CASE NO: C-12-279379-1

DEPT NO: VI

17 **STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENT TO POST-CONVICTION**

18 **PETITION FOR WRIT OF HABEAS CORPUS**

19 DATE OF HEARING: AUGUST 10, 2016
20 TIME OF HEARING: 8:30 AM

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and hereby
23 submits the attached Points and Authorities in Response to Defendant's Supplement to Post-
24 Conviction Petition for Writ of Habeas Corpus.

25 This response is made and based upon all the papers and pleadings on file herein, the
26 attached points and authorities in support hereof, and oral argument at the time of hearing, if
27 deemed necessary by this Honorable Court.

28 //

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On February 15, 2013, pursuant to consolidation of cases C-12-279379 and C-12-
4 279418, the State filed a Second Amended Information in case C-12-279379, charging
5 Defendant Dajuan Don Looper ("Defendant") as follows – Count 1 – Second Degree
6 Kidnapping (Category B Felony- NRS 200.310); Count 2 – Coercion (Category B Felony –
7 NRS 207.190); Counts 3-4 – Child Abuse and Neglect (Category B Felony – NRS 200.508);
8 Count 5 – Battery Constituting Domestic Violence – Strangulation (Category C Felony – NRS
9 200.481, 200.485, 33.018); Count 6 – Sexual Assault with a Minor Under Fourteen Years of
10 Age (Category A Felony – NRS 200.364, 200.366); Count 7 – Lewdness with a Child Under
11 the Age of 14 (Category A Felony – NRS 201.230); Count 8 – Use of Minor in Producing
12 Pornography (Category A Felony – NRS 200.700, 200.710, 200.750); Count 9 – Possession
13 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
14 200.700, 200.730).

15 On January 8, 2014, Defendant entered into a Guilty Plea Agreement, whereby he
16 agreed to plead guilty to the following charges as contained in a Third Amended Information:
17 Count 1 – Attempt Sexual Assault with a Minor Under Fourteen Years of Age (Category B
18 Felony – NRS 193.330, 200.364, 200.366); Count 2 – Battery Constituting Domestic Violence
19 – Strangulation (Category C Felony – NRS 200.481, 200.485, 33.018); Count 3 – Possession
20 of Visual Presentation Depicting Sexual Conduct of a Child (Category B Felony – NRS
21 200.700, 200.730).

22 On April 28, 2014, Defendant appeared for sentencing and was sentenced to the Nevada
23 Department of Corrections as follows: Count 1 – 96 to 240 months; Count 2 – 19 to 60 months,
24 to run consecutive to Count 1; Count 3 – 19 to 72 months, to run consecutive to Counts 1 and
25 2, with 809 days credit for time served. The Court also imposed a special sentence of lifetime
26 supervision and ordered Defendant to register as a sex offender. The Judgment of Conviction
27 was filed on May 23, 2014.

28 //

1 Defendant filed a Notice of Appeal on May 6, 2014. The Nevada Supreme Court
2 affirmed the conviction on December 11, 2014. Looper v. State, No. 65608 (Dec. 11, 2014).
3 Remittitur issued on January 5, 2015.

4 On January 16, 2015, Defendant filed a Post-Conviction Petition for Writ of Habeas
5 Corpus ("Petition") and Motion to Appoint Counsel. The State filed an Opposition to
6 Defendant's Motion to Appoint Counsel on February 2, 2015. On February 4, 2015, this Court
7 appointed counsel. William H. Gamage, Esq., confirmed as counsel on February 11, 2015.

8 On April 18, 2016, Defendant, through counsel, filed the instant Supplement to Petition
9 for Writ of Habeas Corpus ("Supplement"). The State responds as follows, and respectfully
10 requests that Defendant's Petition and Supplement be DENIED.

11 ARGUMENT

12 **I. DEFENDANT RECEIVED EFFECTIVE ASSISTANCE OF COUNSEL**

13 Defendant claims that his guilty plea was involuntarily made due to ineffective
14 assistance of counsel. Claims of ineffective assistance of counsel are analyzed under the two-
15 pronged test articulated in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984),
16 wherein the defendant must show: (1) that counsel's performance was deficient, and (2) that
17 the deficient performance prejudiced the defense. Id. at 687, 104 S. Ct. at 2064. Nevada
18 adopted this standard in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504 (1984). "A court may
19 consider the two test elements in any order and need not consider both prongs if the defendant
20 makes an insufficient showing on either one." Kirksey v. State, 112 Nev. 980, 987, 923 P.2d
21 1102, 1107 (1997).

22 "Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559
23 U.S. 356, 371, 130 S. Ct. 1473, 1485 (2010). The question is whether an attorney's
24 representations amounted to incompetence under prevailing professional norms, "not whether
25 it deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86,
26 88, 131 S. Ct. 770, 778 (2011). Further, "[e]ffective counsel does not mean errorless counsel,
27 but rather counsel whose assistance is '[w]ithin the range of competence demanded of
28 attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975)

1 (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

2 The court begins with the presumption of effectiveness and then must determine
3 whether the defendant has demonstrated by a preponderance of the evidence that counsel was
4 ineffective. Means v. State, 120 Nev. 1001, 1011-1012, 103 P.3d 25, 32-33 (2004). The role
5 of a court in considering alleged ineffective assistance of counsel is “not to pass upon the
6 merits of the action not taken but to determine whether, under the particular facts and
7 circumstances of the case, trial counsel failed to render reasonably effective assistance.”
8 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris,
9 551 F.2d 1162, 1166 (9th Cir. 1977)).

10 In considering whether trial counsel was effective, the court must determine whether
11 counsel made a “sufficient inquiry into the information . . . pertinent to his client’s case.”
12 Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996) (citing Strickland, 466 U.S. at
13 690–91, 104 S. Ct. at 2066). Then, the court will consider whether counsel made “a reasonable
14 strategy decision on how to proceed with his client’s case.” Doleman, 112 Nev. at 846, 921
15 P.2d at 280 (citing Strickland, 466 U.S. at 690–91, 104 S. Ct. at 2066). Counsel’s strategy
16 decision is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
17 circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at 280.

18 This analysis does not indicate that the court should “second guess reasoned choices
19 between trial tactics, nor does it mean that defense counsel, to protect himself against
20 allegations of inadequacy, must make every conceivable motion no matter how remote the
21 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711 (citing Cooper, 551
22 F.2d at 1166 (9th Cir. 1977)). In essence, the court must “judge the reasonableness of
23 counsel’s challenged conduct on the facts of the particular case, viewed as of the time of
24 counsel’s conduct.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. However, counsel cannot
25 be deemed ineffective for failing to make futile objections, file futile motions, or for failing to
26 make futile arguments. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

27 When considering ineffective-assistance-of-counsel claims where the defendant
28 pleaded guilty, the Nevada Supreme Court has held that:

1 A defendant who pleads guilty upon the advice of counsel may
2 attack the validity of the guilty plea by showing that he received
3 ineffective assistance of counsel under the Sixth Amendment to
4 the United States Constitution. However, guilty pleas are
5 presumptively valid, especially when entered on advice of
6 counsel, and a defendant has a heavy burden to show the district
7 court that he did not enter his plea knowingly, intelligently, or
8 voluntarily. To establish prejudice in the context of a challenge to
9 a guilty plea based upon an assertion of ineffective assistance of
10 counsel, a defendant must demonstrate a **reasonable probability**
11 **that, but for counsel's errors, he would not have pleaded guilty**
12 **and would have insisted on going to trial.**

13 Molina v. State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004) (internal quotations and
14 citations omitted) (emphasis added). "A reasonable probability is a probability sufficient to
15 undermine confidence in the outcome." Strickland, 466 U.S. at 694, 104 S. Ct. at 2068. It is
16 counsel's duty to candidly advise a defendant regarding whether or not they believe it would
17 be beneficial for a defendant to accept a plea offer, but the ultimate decision of whether or not
18 to accept a plea offer is the defendant's, as it was in this case. Rhyne v. State, 118 Nev. 1, 8,
19 38 P.3d 163, 163 (2002).

20 Claims asserted in a petition for post-conviction relief must be supported with specific
21 factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State, 100
22 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare" or "naked" allegations are not sufficient,
23 nor are those belied and repelled by the record. Id.; see also NRS 34.735(6).

24 Defendant claims that his plea counsel, Marjorie E. Barbeau, Esq., rendered ineffective
25 assistance because she failed to fully inform him of (1) the nature and requirements of sex
26 offender registration; (2) the consequences and procedural aspects of lifetime supervision; and
27 (3) the requirement that he undergo a medical and mental health assessment in order to be
28 eligible for parole. Supplement at 6. These claims are belied by the record. Hargrove, 100 Nev.
at 502, 686 P.2d at 225.

29 First, this Court canvassed Defendant fully on the consequences of his guilty plea.
30 Recorder's Transcript of Hearing, January 8, 2014, at 2-6. Within this canvass, the Court
31 specifically asked Defendant whether he understood that he would be subject to sex offender
32 registration, lifetime supervision, and a psychosexual evaluation:

1 THE COURT: You understand that you are not eligible for
2 probation for counts 1 and 2?

3 THE DEFENDANT: Yes, Your Honor.

4 ...

5 THE COURT: And as to count 3, the visual presentation of sexual
6 conduct of a child charge that by pleading guilty to that charge
7 there's going to be a psychosexual evaluation – it's kind of moot
8 in a sense – but you wouldn't be eligible for probation unless it
9 found you were not a high risk to reoffend. Additionally if you
10 serve time in prison you can't be paroled unless there's a finding
11 that you do not represent a high risk to reoffend. Do you
12 understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And additionally your sentence will include a
15 requirement that you register as a sex offender. Do you understand
16 that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: It's not lifetime supervision?

19 MS. BARBEAU: Judge, that was part of the negotiations. So it
20 will be lifetime supervision.

21 THE COURT: It is lifetime. So you understand you will also be
22 subject to lifetime supervision as a sex offender even after release
23 from custody, do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 Id. at 5-6. When Defendant was asked whether he had questions for the Court or his attorney,
26 he replied in the negative. Id. at 6. While the advisement concerning the psychosexual
27 evaluation appeared after discussion of Count 3, this does not make a difference, and it was
28 clear Defendant was advised that before he could be eligible for parole, he would have to
undergo a psychosexual evaluation.

Further, the Guilty Plea Agreement contained specific provisions informing Defendant
of the psychosexual evaluation and sex offender registration requirements:

Further, that before I am eligible for parole a panel consisting of
the administrator of the mental health and developmental services
of the department of human resources or his designee; the director
of the department of corrections or his designee; and a
psychologist license to practice in this state or a psychiatrist
license to practice medicine in this state certifies that I was under

1 observation while confined in an institution of the department of
2 corrections that I do not represent a high risk to reoffend based
upon a currently accepted standard of assessment.

3 I further understand that the Court will include as part of my
4 sentence, in addition to any other penalties provided by law,
pursuant to NRS 179D.450, I must register as a sex offender within
forty-eight (48) hours of release from custody.

5 Guilty Plea Agreement, filed January 8, 2014, at 3-4. Thus, the Guilty Plea Agreement further
6 advised Defendant of the consequences of his plea.

7 Defendant claims that Palmer v. State, 118 Nev. 823, 831, 59 P.3d 1192, 1197 (2002),
8 is analogous to his case. Palmer, however, is distinguishable. In that case, the Nevada Supreme
9 Court held that, “the record of a plea canvass in the district court should reflect that a defendant
10 entering a plea of guilty to a sexual offense enumerated in NRS 176.0931 has been specifically
11 advised that lifetime supervision is a consequence of the plea.” Unlike the district court in
12 Palmer, the plea canvass in this case did exactly that.

13 Further, the Palmer Court noted “that the failure of the record to reflect such an
14 advisement is not necessarily reversible error,” as a guilty plea would remain valid “if the
15 totality of the circumstances revealed by the record otherwise demonstrate that the defendant
16 was aware of the consequence prior to the entry of the plea, and was so informed either by the
17 written plea agreement, by counsel, or in some other manner.” Id. Here, once again, it is clear
18 from the record that Defendant was advised of the lifetime supervision consequence via the
19 plea canvass, even if it was not contained in the Guilty Plea Agreement. Under a totality of the
20 circumstances approach, as mandated by Palmer, it is clear that Defendant was advised that he
21 would be subject to lifetime supervision upon release.¹

22 To the extent Defendant attempts to insert additional claims relating to the voluntariness
23 of his plea, and that he was given an inadequate amount of time to review the Guilty Plea
24 Agreement in his “Justification for Evidentiary Hearing” Section, these claims are belied by
25 this Court’s canvass, where Defendant acknowledged that he had read the Guilty Plea
26 Agreement, understood everything contained within it, and discussed it with his attorney.

27 ¹ To the extent being advised of the “procedural aspects” of lifetime supervision exceeds being
28 advised of the consequence of lifetime supervision, it is not required by Palmer, and Defendant
does not point to any other authority requiring a drawn-out explanation of all the aspects of
lifetime supervision.

1 Recorder's Transcript of Hearing, January 8, 2014, at 4.

2 Therefore, this claim is belied by the record and must be denied.

3 **II. DEFENDANT'S CLAIM THAT THE LIFETIME SUPERVISION**
4 **STATUTES ARE UNCONSTITUTIONAL IS PROCEDURALLY**
5 **BARRED**

6 Defendant also argues that Nevada's lifetime supervision statutes, NRS 176.0931, NRS
7 213.1243, and NRS 213.1255 are unconstitutionally vague. Supplement at 7-11. This claim is
8 procedurally barred.

9 Nevada law dictates that all claims appropriate for direct appeal must be pursued on
10 direct appeal or they will be "considered waived in subsequent proceedings." Franklin v. State,
11 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v.
12 State, 115 Nev. 148, 979 P.2d 222 (1999). The Nevada Supreme Court has emphasized that:
13 "[a] court *must* dismiss a habeas petition if it presents claims that either were or could have
14 been presented in an earlier proceeding, unless the court finds both cause for failing to present
15 the claims earlier or for raising them again and actual prejudice to the petitioner." Evans v.
16 State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001) (emphasis added), overruled in part on
17 other grounds, Lisle v. State, 131 Nev. ___, 351 P.3d 725 (2015).

18 Here, Defendant's claims relating to the constitutionality of the lifetime supervision
19 statutes could have been raised during his direct appeal. Defendant is obviously raising a
20 substantive attack on the statutes, rather than a collateral one based on the actions of counsel,
21 given that in his "Justification for Evidentiary Hearing" section, he states that this claim
22 "amounts to a review of this Court of the language of the statutes complained of to render an
23 at-law decision." Supplement at 11. Defendant fails to establish good cause for failing to raise
24 this claim on direct appeal. Accordingly, this claim should be dismissed pursuant to Evans and
25 Franklin.

26 Additionally, this claim falls outside the scope of claims that may be raised in a habeas
27 petition after a guilty plea:

- 28 1. The court shall dismiss a petition if the court determines that:

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1 (a) The petitioner's conviction was upon a plea of guilty or guilty
2 but mentally ill and the petition is not based upon an allegation
3 that the plea was involuntarily or unknowingly entered or that the
4 plea was entered without effective assistance of counsel.

5 . . .

6 unless the court finds both cause for the failure to present the
7 grounds and actual prejudice to the petitioner.

8 NRS 34.810(1)(a). This claim clearly falls outside the scope of permissible claims for habeas
9 relief after a guilty plea. Defendant fails to establish good cause and prejudice to overcome
10 this procedural bar. Therefore, this claim should also be dismissed pursuant to NRS
11 34.810(1)(a).

12 **III. DEFENDANT'S PRO PER CLAIMS ARE WITHOUT MERIT**

13 Defendant also raised several pro per claims within his initial Petition, including: (1)
14 counsel did not visit him; (2) counsel did not file "exculpatory" motions; (3) counsel did not
15 file a "habeas in limine challenging the sufficiency of the evidence;" (4) counsel did not obtain
16 a fair sentence for Defendant; (5) counsel did not examine the witness statements "closely
17 enough," (6) counsel refused to involve Defendant in the defense; (7) counsel was ineffective
18 because the State retained the right to argue; (8) counsel did not advise him that sentencing
19 was a matter of the Court's discretion; (9) counsel "took advantage" of him; and (10) counsel
20 did not seek withdrawal of his plea.

21 These claims amount to nothing but bare, naked allegations. Hargrove, 100 Nev. at 502,
22 686 P.2d at 225.

23 To the extent Defendant alleges a failure to investigate, he does not show prejudice. A
24 guilty plea, of necessity, cuts short trial preparation and investigation. The notion that guilty
25 pleas are entered into only after all trial preparation is fully concluded is false:

26 Molina impliedly argues that, to satisfy Strickland, counsel must
27 fully and completely prepare for trial, exhausting all avenues of
28 defense, before rendering advice concerning a negotiated
arrangement proposed by the State. We disagree. Where counsel
and the client in a criminal case clearly understand the evidence
and the permutations of proof and outcome, counsel is not required
to unnecessarily exhaust all available public or private resources.

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1 Molina, 120 Nev. at 191-92, 87 P.3d at 538. A defendant who contends his attorney was
2 ineffective because he did not adequately investigate must show how a better investigation
3 would have rendered a more favorable outcome probable. Id. Defendant fails to make this
4 showing.

5 To the extent Defendant claims that counsel failed to file a pre-trial writ of habeas
6 corpus, Defendant waived his right to a preliminary hearing. Reporter's Transcript of Waiver
7 of Preliminary Hearing, February 9, 2012. Defendant could not have raised a pre-trial
8 challenge to the sufficiency of the allegations in light of his waiver, and any motion would
9 have been futile. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

10 Defendant fails to show what "exculpatory" motions should have been filed or that
11 these motions had any likelihood of success. Ennis, 122 Nev. at 706, 137 P.3d at 1103.

12 Defendant's claim that he was not advised that sentencing was a matter of the Court's
13 discretion is belied by this Court's canvass and the Guilty Plea Agreement. Recorder's
14 Transcript of Hearing, January 8, 2014, at 6; Guilty Plea Agreement, filed January 8, 2014, at
15 4. To the extent Defendant complains of the State's retention of the right to argue, he chose to
16 plead guilty despite this provision, and counsel cannot be faulted for Defendant's choice to
17 take this negotiation. See Rhyne, 118 Nev. at 8, 38 P.3d at 163.

18 Defendant's objections to his counsel's performance at sentencing are subjective and
19 belied by counsel's sentencing argument. Recorder's Transcript of Hearing, April 28, 2014, at
20 7. And Defendant fails to show any legal basis to raise a Motion to Withdraw Guilty Plea, and
21 his conduct at sentencing, which reflects a willingness to proceed with sentencing, suggests he
22 never sought to have his guilty plea withdraw.

23 Finally, Defendant's claims relating to his relationship with counsel are bare
24 allegations. Hargrove, 100 Nev. at 502, 686 P.2d at 225. There is no indication that counsel
25 "took advantage" of him. And Defendant was not entitled to a meaningful relationship with
26 counsel nor entitled to direct trial strategy. See Morris v. Slappy, 461 U.S. 1, 13-14, 103 S.
27 Ct. 1610, 1616 (1983); Rhyne, 118 Nev. at 8, 38 P.3d at 163.

28 //

1 Accordingly, Defendant's pro per claims should be denied in their entirety.

2 **IV. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

3 Defendant also requests an evidentiary hearing. Motion at 1. NRS 34.770 determines
4 when a defendant is entitled to an evidentiary hearing:

- 5 1. The judge or justice, upon review of the return, answer and all
6 supporting documents which are filed, shall determine whether
7 an evidentiary hearing is required. A petitioner must not be
8 discharged or committed to the custody of a person other than
9 the respondent unless an evidentiary hearing is held.
- 10 2. If the judge or justice determines that the petitioner is not
11 entitled to relief and an evidentiary hearing is not required, he
12 shall dismiss the petition without a hearing.
- 13 3. If the judge or justice determines that an evidentiary hearing is
14 required, he shall grant the writ and shall set a date for the
15 hearing.

16 The Nevada Supreme Court has held that if a petition can be resolved without
17 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
18 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605
19 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific
20 factual allegations, which, if true, would entitle him to relief unless the factual allegations are
21 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; Hargrove, 100 Nev. at
22 503, 686 P.2d at 225 (holding that "[a] defendant seeking post-conviction relief is not entitled
23 to an evidentiary hearing on factual allegations belied or repelled by the record"). "A claim is
24 'belied' when it is contradicted or proven to be false by the record as it existed at the time the
25 claim was made." Mann, 118 Nev. at 354, 46 P.3d at 1230 (2002).

26 Here, an evidentiary hearing is unwarranted because the petition may be resolved
27 without expanding the record. Mann, 118 Nev. at 356, 46 P.3d at 1231; Marshall, 110 Nev. at
28 1331, 885 P.2d at 605. As explained above, Defendant's claims fail to sufficiently allege
ineffective assistance of counsel, are bare and belied by the record, and an inadequate showing
of prejudice has been made. Hargrove, 100 Nev. at 503, 686 P.2d at 225. No evidentiary
hearing is warranted in order to deny such claims. Accordingly, Defendant's request for an
evidentiary hearing must be denied.

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CONCLUSION

Based upon the foregoing, the State respectfully requests that Defendant's Petition and Supplement be DENIED.

DATED this 13th day of June, 2016.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

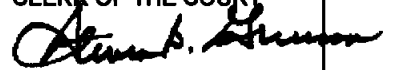
CERTIFICATE OF SERVICE

I hereby certify that service of the above and foregoing was made this 13th day of JUNE 2016, to:

WILLIAM GAMAGE, ESQ.
wgamage@gamagelaw.com

BY /s/ HOWARD CONRAD
Secretary for the District Attorney's Office
Special Victims Unit

hjc/SVU



1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,
9 Plaintiff,

CASE#: C279379, C279418

DEPT. VI

10 vs.

11 DUJUAN DON LOOPER,
12 Defendant.

13
14 BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE
15 THURSDAY, JULY 6, 2017

16 **RECORDER'S TRANSCRIPT OF HEARING**
17 **EVIDENTIARY HEARING**

18 APPEARANCES:

19 For the State:

JAMES SWEETIN, ESQ.
Chief Deputy District Attorney

21
22 For the Defendant:

WILLIAM H. GAMAGE, ESQ.

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25 RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

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1 Las Vegas, Nevada, Thursday, July 6, 2017

2
3 [Case called at 1:41 p.m.]

4 THE COURT: Okay. Alright, let me get appearances here in the courtroom
5 first.

6 MR. SWEETIN: James Sweetin for the State.

7 MR. GAMAGE: William Gamage on behalf of Mr. Looper who is present in
8 custody.

9 THE COURT: So we are on calendar today for an evidentiary hearing
10 regarding the petition for a writ of habeas corpus in this matter alleging ineffective
11 assistance in connection with the plea deal that Mr. Looper entered into in this case.
12 So I see and of course I'm aware that we have a witness appearing by audio/visual.
13 I don't -- can you see me?

14 THE WITNESS: Yes, I can, Your Honor. Good morning.

15 THE COURT: Good morning. Because there's like no obvious camera there
16 and I'm clueless about technology so anyway. Okay, so we -- and this is Ms.
17 Weaver we have, correct?

18 THE WITNESS: That is correct.

19 THE COURT: Alright, so given that -- and it's my understanding that Ms.
20 Weaver is in Hawaii and was unable to be here in person or it was certainly going to
21 be inconvenient for her to do so. And we made arrangements to have her appear
22 by audio/visual transmission. First let me just be clear that no party is objecting to
23 having her appear that way, correct?

24 MR. GAMAGE: No objection, Judge.

25 MR. SWEETIN: No objection, Judge.

1 THE COURT: Okay. Alright, and so I -- since she's available will you be
2 calling her first?

3 MR. GAMAGE: Yes.

4 THE COURT: Okay, so let's go ahead and swear her in and get her
5 testimony complete first.

6 MR. SWEETIN: That's fine, Judge. Just as a preliminary matter I have
7 marked four exhibits. And they're exhibits, they're actually already court filings and I
8 think they might be included in the appendix of the Defendant's brief as well. They
9 are the Second Amended Information, which details the charges before the Guilty
10 Plea was entered into, Guilty Plea Agreement. There's the Guilty Plea Agreement
11 itself. There is the Third Amended Information, which details the charges after the
12 Guilty Plea Agreement. And there's marked at 4 is the transcript of the entry of plea
13 before, Your Honor.

14 THE COURT: Okay.

15 MR. SWEETIN: And I believe both parties are stipulating to the admission of
16 that.

17 THE COURT: So they're number 1 to 4?

18 MR. SWEETIN: Yes, Your Honor.

19 MR. GAMAGE: And, Judge, they are a part of my appendix. And they are
20 court documents. We have no objection.

21 THE COURT: So I will admit Exhibits 1 through 4 for today's hearing. And I
22 did of course review them in connection with preparing for today's hearing as well.

23 **[STATE'S EXHIBIT 1 THROUGH 4 -- ADMITTED]**

24 THE COURT: Okay. Alright, let's go ahead and swear her in then.

25 THE CLERK: Ms. Weaver, if you can please raise your right hand. I don't

1 know if I have her stand if she'll be cut off.

2 THE COURT: Okay, so sit. It's okay.

3 **MELINDA WEAVER**

4 [having been called as a witness and being first duly sworn, testified as
5 follows:]

6 THE CLERK: Thank you. Will you please state your full name, spelling your
7 first and last name for the record?

8 THE WITNESS: Yes, it's Melinda Marie Weaver.

9 MR. GAMAGE: Your Honor, as a preliminary matter I'd like to discuss the
10 issue of the waiver of attorney-client privilege for purposes of Ms. Weaver's
11 testimony here today. It is our position, Judge, that the waiver will be limited only to
12 the claims as we have brought here today. Meaning that they will be limited to her
13 ability to rebut or discuss the conversations she may or may not have had with Mr.
14 Looper leading up to his decision to enter into the guilty plea that's part of the record
15 in this case.

16 THE COURT: So but -- so it's regarding advice and discussions about the
17 decision to enter the guilty plea?

18 MR. GAMAGE: Yes, Judge, I think there is -- or there has been argued in
19 some of my other cases that the attorney-client privilege waiver, because of the
20 filing of a writ, is complete. And what I'm saying to the Court is no it is not. It is
21 limited. It is only limited to the claims. For that reason if my client were to come up
22 and testify, the District Attorney shouldn't be able to cross-examine him to actually
23 what he may or may not have done or as it, you know, as if it was a --

24 THE COURT: Oh, about the underlying crimes?

25 MR. GAMAGE: Yes, Judge. Or what was said to the attorney, or ask the

1 attorney did Mr. Looper ever confess to you or things like that.

2 THE COURT: Sure, unless you open the door to that area I think that is
3 correct --

4 MR. GAMAGE: Potentially, Judge.

5 MR. SWEETIN: Well I would agree with that. If it's not relevant to the issues
6 that are before the Court then I don't think we can get into it. I don't think standard,
7 you know, comment just in regards to just the communications that that's
8 appropriate. But if it's something that's relevant to the issue before the Court then I
9 think that that's absolutely correct.

10 THE COURT: Right, I mean, I guess here's what I would say, to the extent
11 that part of the petition, part of the burden that has to be met is to establish that he
12 would not have taken this deal if not for these alleged lack of advice or improper
13 advice, then his decision to enter the plea is obviously an issue which includes
14 potential consequences he was facing.

15 MR. GAMAGE: I can see that, Judge. I guess obviously we'll deal with that
16 as we get into those particular issues.

17 THE COURT: Right.

18 MR. GAMAGE: It's just I wanted to be sure.

19 THE COURT: But, I mean, in general as a general principle I agree with you
20 it's not a complete waiver of any conversation he ever had. It's focused on the
21 decision to enter the guilty plea.

22 MR. GAMAGE: Uh-huh.

23 THE COURT: But I guess to the extent there's a dispute we can take it up
24 question by question.

25 MR. GAMAGE: And then preliminarily also, Judge, as to ground 2, I believe

1 the Court has preliminarily discussed with the parties that they didn't -- that the
2 Court did not feel that an evidentiary hearing on that issue was appropriate.
3 Certainly we did in our moving papers state that it -- an at law decision could be
4 made by the Court. The government's position on that is that our right to bring a
5 vagueness claim as to the statutes delineated was waived because they were not
6 brought as part of an appeal.

7 THE COURT: Right.

8 MR. GAMAGE: And so I'm just going to put onto the record, Judge, that we
9 would object to that. We believe that we still do have standing for the Court to rule
10 on that issue. Because going forward in the future should he get paroled he could
11 be arrested for those charges and feel not just potential but actual harm which would
12 give rise to his -- another claim as to the nature of what is a place primarily designed
13 for children, for example, as we put in the brief. So --

14 THE COURT: Sure.

15 MR. GAMAGE: -- we would put that on the record. We would ask the Court
16 to consider it as part of its rulings here today. But we certainly respect the rulings of
17 the Court today.

18 THE COURT: So I already ordered that claim dismissed at the hearing on
19 August 10, 2016. And there's a limited scope of what can be raised in a petition
20 when it's based on a guilty plea and I found that that argument was not within that
21 limited scope of what can be raised on a petition with a guilty plea having been
22 entered. And additionally, it is an argument that could have been raised on the
23 direct appeal and so is procedurally barred in that aspect as well. So I appreciate
24 you disagree and -- but that's the ruling and so it's --

25 MR. GAMAGE: We're just reserving our objections, Judge.

1 THE COURT: Of course.

2 MR. GAMAGE: There has been no order, by the way, on that prior ruling so
3 and usually it all gets encompassed within the findings of fact and conclusions of
4 law.

5 THE COURT: Fair enough.

6 MR. GAMAGE: That's why we're bringing it today.

7 THE COURT: Okay. No problem.

8 MR. GAMAGE: Thank you.

9 THE COURT: Okay. Alright, so you're ready to proceed with Ms. Weaver?

10 MR. GAMAGE: Yes, may I -- Ms. Weaver, can you see me standing up or
11 you prefer me sitting down? Can you -- I can't tell what your angle is.

12 THE WITNESS: [Indiscernible].

13 MR. GAMAGE: Say again.

14 THE WITNESS: I'm sitting down. It's fine.

15 THE COURT: Can you see him?

16 MR. GAMAGE: Can you see my face or you just see like my belly. Is there a
17 camera here or --

18 THE WITNESS: You keep switching back and forth. First it's -- now you're --
19 I see the back of you and sometimes it switches to the front of you and goes back
20 and forth.

21 MR. GAMAGE: Okay, so you're piped into the JAVS system?

22 THE COURT RECORDER: JAVS.

23 THE COURT: Right.

24 MR. GAMAGE: You're piped into the JAVS system --

25 THE COURT: Yeah.

1 MR. GAMAGE: -- so it moves around the Court, okay.

2 THE COURT: Why don't you --

3 THE WITNESS: Yes.

4 THE COURT: See if you stand at the podium.

5 MR. GAMAGE: Okay.

6 THE COURT: And see if that gets you there. Talk now.

7 MR. GAMAGE: Do you see me now? Can you hear me now?

8 THE WITNESS: [Indiscernible].

9 THE COURT: We froze --

10 THE WITNESS: It switched back and forth. I'm sorry, it's not steady.

11 MR. GAMAGE: It's still switching. For purposes of discussion --

12 THE WITNESS: Yes.

13 MR. GAMAGE: -- is it possible for a court technician to stop the JAVS from
14 moving automatically. Can we manually switch it from podium to podium or I don't
15 know what would be best.

16 THE COURT: I think it can be locked on to one camera, because what the
17 JAVS does as a default and what it routinely does in the courtroom is it follows
18 whoever is talking at any given time. So now it's on me on the JAVS because I'm
19 talking and then --

20 MR. GAMAGE: Okay.

21 THE COURT: -- it should be going to you when you're talking. But there may
22 be some switching. You're asking for it to only be on you and not be able to go to
23 counsel table or me?

24 MR. GAMAGE: As part of the process of allowing this witness to remain in
25 Hawaii with her issues and to be able to testify for her convenience and the Court's

1 convenience --

2 THE COURT: So is that --

3 MR. GAMAGE: -- I just want to be able to have a decent conversation as part
4 of the direct.

5 THE COURT: Do you know how to lock it on him?

6 THE COURT RECORDER: I believe that I can lock it. But I believe the
7 purpose of it roaming is so that when she talks she gets pulled into the record as
8 well. And if I lock --

9 THE COURT: That's true. Otherwise we won't see her. You're right. That's
10 a good point.

11 MR. GAMAGE: Okay.

12 THE COURT: Thank you, --

13 MR. GAMAGE: Okay.

14 THE COURT: -- Ms. Recorder.

15 MR. GAMAGE: I guess we'll just deal with it.

16 THE COURT: We'll do the best we can.

17 **DIRECTION EXAMINATION**

18 BY MR. GAMAGE:

19 Q Ms. Weaver, if you can't hear me or understand me please raise your
20 hand or say something. Obviously we're going to be limited by the nature of this
21 environment. Okay.

22 My name is William Gamage. I represent --

23 A Okay.

24 Q -- Dajuan Looper in this case as part of a writ of habeas corpus which
25 we filed with the District Court, do you understand that?

1 A Yes, I do.

2 Q Okay, good. Do you recall representation of Mr. Looper?

3 A Yes, I do.

4 Q Okay. How long have you been an attorney?

5 A April 2009, so about 8 years.

6 Q Okay, and how long had you been an attorney when you first met Mr.

7 Looper.

8 A I'd say 4 to 5 years.

9 Q Okay. And were you his first --

10 A [Indiscernible].

11 Q Were you his first attorney when you took over his representation?

12 A No, and I was not his sole representation. It was actually Mr. Sgro who

13 was his attorney and I worked with Mr. Sgro.

14 Q Okay. Who was his prior attorney?

15 A Kevin Leik.

16 Q Alright, what do you recall --

17 THE COURT: Sorry, Kevin who?

18 MR. GAMAGE: Can you repeat --

19 THE WITNESS: Leik.

20 THE COURT: Spell please.

21 THE WITNESS: L-E-I-K.

22 THE COURT: Oh, thank you.

23 THE WITNESS: No problem.

24 THE COURT: Okay, so we have a little bit of a delay apparently so we all will

25 need to kind of wait to not over talk.

1 MR. GAMAGE: Yes, Judge.

2 BY MR. GAMAGE:

3 Q When you took over this case what preparations did you make to gather
4 the case file and to ensure that you had all the information related to the case?

5 A All the information was already in our office. Mr. Leik also worked for
6 Mr. Sgro. And when he left to move to Portland Mr. Sgro took over the case. So we
7 had everything.

8 Q Okay, can you discuss what is the nature of the representation -- or the
9 relationship between Mr. Leik and Mr. Sgro's office?

10 A At the time he was an associate attorney before he left to move to
11 Portland, Oregon.

12 Q So you were in the same firm then with Mr. Leik, correct?

13 A Yes, that's correct.

14 Q So I guess it's not totally correct to say that Mr. Leik was his prior
15 attorney. The Sgro Law Firm was his attorney at the time and just one of the two
16 associates in the firm was representing this particular Defendant, is that correct?

17 A Yes, if you like to say it that way. Mr. Leik was actually the appointed
18 attorney though at the time.

19 Q Okay.

20 A And when he left Mr. Sgro would have come too so.

21 Q Okay, so there was an appointment through the court system?

22 A That's correct.

23 Q Okay. Now prior to --

24 A Or through Drew Christensen.

25 THE COURT: Right, through the Office of Appointed Counsel?

1 THE WITNESS: That's correct.

2 BY MR. GAMAGE:

3 Q So but prior to that appointment were there other attorneys that had
4 been handling Mr. Looper's case?

5 MR. SWEETIN: Objection, relevance. I think that we're here to determine --
6 first of all I'm not sure that there's a foundation as to the time period that we're
7 talking about. And I think we're here to discuss the Defendant's entry of plea in this
8 case. And I'm not sure that a long history of attorneys that might have represented
9 him prior to a discussion in regards to the plea and the entry of that plea is at all
10 relevant.

11 MR. GAMAGE: Your Honor, it goes to the information that she had related to
12 whether or not she had a full and complete file so that she could be informed and
13 conduct a proper investigation related to her information she was going to give Mr.
14 Looper related to the case.

15 THE COURT: Alright --

16 MR. GAMAGE: And I'll narrow it to that.

17 THE COURT: Right, I'm going to overrule the objection now on that basis, but
18 you know we'll move through it quickly.

19 MR. GAMAGE: Yes, Your Honor.

20 BY MR. GAMAGE:

21 Q I'm sorry, Ms. Weaver, so were there any other attorneys that were --
22 that came before you --before the Sgro Law Firm on Mr. Looper's representation?

23 A I don't recall.

24 Q Thank you. How many times did you meet Mr. Looper?

25 A I'd say several times.

1 Q Can you give us a more specific amount or number? Can you give me
2 a range other than the term several. I mean, --

3 A I'd say somewhere between 4 to 6 --

4 Q Okay, and where did you meet with --

5 A -- in terms of visit -- oh sorry.

6 Q No, you -- I apologize because I was talking over your answer, I
7 apologize. Go ahead and finish your answer please.

8 A I'd say between 4 to 6 visits either at CCDC or at the Nellis facility but --
9 and then also court time.

10 Q Okay, did you --

11 MR. SWEETIN: And, Judge, I'm going to ask for foundation as to when we're
12 talking about as to these meetings.

13 MR. GAMAGE: Judge, I -- the documents that we've put into place indicate
14 when he was charged, when he went through the court system, when he entered his
15 plea. I was --

16 THE COURT: Right.

17 MR. SWEETIN: Okay.

18 BY MR. GAMAGE:

19 Q Ms. Weaver, what year did this occur?

20 A It's difficult for me to pin down the year, but to explain my
21 representation of him when Mr. Leik left I worked with Mr. Looper very briefly and
22 visited him a few times. Then the case was turned over to Marjorie Barbeau and
23 then I was brought in just to do the sentencing phase.

24 Q Okay, can you give me --

25 A So I [indiscernible] prior to sentencing and then maybe 3-4 times way

1 back when, when we initially -- when Mr. Leik left.

2 Q If I was to represent to you that the date on the guilty plea signed in this
3 case and submitted in my appendix was the 8th day of January 2014. Would that
4 sound about correct?

5 A Yeah, yes.

6 Q Okay, so for purposes of your representation you started off for the
7 Sgro Firm after Mr. Leik had the matter. And then you jumped in, you handled some
8 preliminary matters. Did you handle the negotiation of this deal or did you handle
9 any phase --

10 A No.

11 Q -- of the agreement that ended up being the guilty plea in this case?

12 A No, none of it.

13 Q Okay, did you take copies of discovery and take them to Mr. Looper's --
14 at the jail and discuss them with him?

15 A I probably had.

16 Q When you said probably had, is that -- are you saying that because that
17 is what you believe is your normal course of business or do you have a specific
18 recollection if you did or didn't?

19 A I do have a recollection of very early on in the case and going over
20 some of the materials and asking him about them.

21 Q What sort of materials were included in the discovery from the District
22 Attorney's Office?

23 A I can't recall specifically, but I'm -- I think it was witness statements.

24 Q Did -- as a matter of course did the Sgro Law Office produce copies of
25 all discovery for the defendants and take that over to the jail?

1 A I don't understand. I'm sorry.

2 Q I apologize, I probably asked a bad question. Let me put it to you this
3 way. When you worked at the Sgro Law Firm was it normal course of business for
4 the firm when they got a case to get the discovery from the District Attorney's Office,
5 make photo copies of it, and then take it to the defendant if they were in custody?

6 A It was normal course to go over discovery with the client. I'm not sure
7 what you mean about taking and complete copy of the file.

8 Q Well I didn't ask the file. I -- the statement was is that, you know, did
9 you bring the charging documents and any of the documents related to the case that
10 the District Attorney produced as evidence, potential evidence in the case, did you
11 make copies of that information and give that to the client?

12 A I personally did not, as I recall.

13 Q Do you believe that that occurred?

14 A It was normal practice to give the defendant anything that they asked
15 for that they were permitted to have.

16 Q Did Mr. Looper ever complain to you that he never received copies of
17 his discovery?

18 A Not that I recall.

19 Q Alright, now as part of your discussions you stated that you met with
20 him approximated 4 to 5 times, is that a fair statement?

21 A That -- an aggregate, yes.

22 Q Okay, during the 4 to 5 times that you met with him can you explain on
23 the first occasion what you spoke to Mr. Looper about or what you explained to Mr.
24 Looper?

25 A I can't recall exactly. I do remember meeting with him the first time with

1 Mr. Leik, because he was preparing to leave.

2 Q Uh-huh.

3 A And then my introduction and went over some of the angles that we had
4 on the case.

5 Q Okay.

6 A I remember there was another time after that that was not --

7 Q Okay, you kind of cut out there.

8 A I'm sorry.

9 Q Can you back up just a minute and restate what you just said?

10 A Oh okay. I do recall I think the first time that I met Mr. Looper was with
11 Mr. Leik, if I am remembering correctly, at CCDC as an introduction, because Mr.
12 Leik was leaving to kind of go over the case. I recall another time visiting Mr.
13 Looper where we discussed matters not related to the case.

14 Q Okay.

15 A In terms of an issue at the jail.

16 Q Okay, anything else?

17 A I just remember general conversations with him about the case and
18 people to talk about with -- or people to talk to, people that he thought would be
19 helpful at his sentencing. So that --

20 Q Well -- now let's back up.

21 A [Indiscernible].

22 Q He had not made a decision during the time that you represented him to
23 enter in his guilty plea, is that correct?

24 MR. SWEETIN: Objection, that is --

25 THE WITNESS: That's correct.

1 MR. GAMAGE: Well, --

2 MR. SWEETIN: I believe that's inconsistent with the testimony.

3 THE COURT: She later represented him at the sentencing so --

4 MR. SWEETIN: Yes.

5 MR. GAMAGE: Okay, I see.

6 THE COURT: That's why you've got to be clear on time.

7 MR. GAMAGE: But we're on only the second instance, so I was like trying to

8 --

9 THE COURT: Okay.

10 MR. GAMAGE: I apologize, Judge.

11 THE COURT: Alright, just go ahead.

12 BY MR. GAMAGE:

13 Q Let me rephrase that, because maybe I confused myself and everyone
14 else. What I'm trying to delineate between is your representation of him before the
15 negotiations for his guilty plea occurred and then also I'm talking to you about your
16 meetings with him prior to sentencing, okay? So let's hold off --

17 A Okay.

18 Q -- on the sentencing issues for right now, okay. And so let's just talk
19 about your meetings with him leading up to where you handed the case off to this
20 other attorney.

21 A Uh-huh.

22 Q And it was my understanding that you testified that no negotiation had
23 occurred at that point, is that correct?

24 A That's correct.

25 Q Okay, so -- alright so within that confine can you tell me about the next

1 meeting you had did you discuss evidence or the weight of the evidence that you
2 perceived was against Mr. Looper?

3 A Truthfully I don't recall every meeting. I do recall going over the case
4 with him generally, but I can't recall 3 or 4 years ago what I said to him at each
5 meeting.

6 Q As you sit here today can you recall what your thought process was
7 relating to the case, whether it was a defensible case or not?

8 A Yes, I do.

9 Q Okay, and so what was your opinion as to whether or not Mr. Looper
10 had a defensible case or not?

11 A I believe at the time that he had a defensible case.

12 Q Okay.

13 A Not airtight, but defensible.

14 Q Okay, and can you articulate for the Court why you believe he had a
15 defensible case?

16 A At the time of the -- as I recall again, it's been a while, the only evidence
17 against him that was a photograph that was in the Cloud. And I thought the
18 technology issues would be defensible.

19 Q What -- do you remember the nature of the photograph? What was in
20 the photograph and we don't have to necessarily be graphic. I'm talking about the
21 parts of Mr. Looper.

22 A The parts of Mr. Looper were his fingers.

23 Q Okay, was there any other testimony that would be able to identify
24 those fingers as Mr. Looper's. Was there any identifying marks or anything like that
25 as part of the evidence, do you recall?

1 A Not that I recall, but again it's been quite a while.

2 Q Thank you. Do you recall any evidence related to testing of substances
3 or testing for DNA related to the issues of the case?

4 A I believe somewhere around the time I think I was handing it off there
5 was some issue about finding his DNA in the victim's underwear.

6 Q Do you recall whether or not that actually occurred or didn't occur?

7 A I'm sorry?

8 Q Do you recall --

9 A -- whether they found that?

10 Q Yeah, I'm asking you whether or not it is your impression as to whether
11 or not they did or did not find his DNA in the victim's underwear?

12 A I thought that they had, but again it's been a while.

13 Q How about testing of any sort of drug substance, did you recall any
14 evidence related to that?

15 A I remember that was an issue with some glasses, but I don't recall the
16 outcome.

17 MR. GAMAGE: Court's indulgence.

18 BY MR. GAMAGE:

19 Q During these meetings, Ms. Weaver, did Mr. Looper have any questions
20 of you that you remember as you sit here today?

21 A Not that I recall as I sit here today.

22 Q Did you, as part of your representation, discuss with Mr. Looper the
23 potential penalties for the -- the charges he was facing?

24 A Yes I did --

25 Q Can you tell --

1 A Oh wait -- prior to sentencing, I'm sorry.

2 Q I'm talking about prior to sentencing, yes. That's the time frame we're

3 talking about and I'll hop to sentencing in a minute.

4 A Okay, I apologize.

5 Q No problem.

6 A No, I don't specifically recall that.

7 Q Okay. Do you recall whether or not the District Attorney's Office had

8 made an offer during the phase of your representation prior to sentencing?

9 A I don't recall that.

10 Q Do you recall ever discussing with Mr. Looper potential -- a potential

11 resolution that you wanted to maybe offer to the District Attorney's Office?

12 A No.

13 Q So would you agree that you were proceeding on the basis that this

14 was a defensible case?

15 A I was at the time.

16 Q Okay. Did you hire an investigator?

17 A I believe we did have an investigator. I can't recall who it is at this

18 moment.

19 Q Do you recall giving that investigator any sort of directives or requests

20 to conduct any sort duties or work?

21 A Not specifically, not specific requests I should say.

22 Q Okay. Alright well let's shift now to the timeframe related to your work

23 up to the sentencing, okay. About -- at about what timeframe related to the date of

24 the sentencing did you come back onto the case?

25 A I would say -- a month or two before sentencing.

1 THE COURT: How long?

2 BY MR. GAMAGE:

3 A After the guilty plea of this.

4 Q Okay, so let's repeat that because you got kind of muffled. So can you
5 repeat what you just testified to?

6 A Sorry, I came into the case approximately a month after he entered the
7 Guilty Plea Agreement I believe.

8 Q Then how many days was that before sentencing, do you recall?

9 A I don't recall specifically. I think that there were two sentencing dates
10 too. If I recall correctly we hadn't received the PSI at the time.

11 Q Okay.

12 A But I'm not entirely sure.

13 Q So as part of the process of you taking over representation what did
14 you do to get prepared for the sentencing?

15 A I visited Mr. Looper. I believe he was at Nellis at the time. We went
16 over a number of his family members that would have positive things to say about
17 him. We went over some of the accolades in his life that would be helpful for
18 sentencing and generally discussed how we'd be proceeding forward.

19 Q Okay. Did you discuss with him the terms of the Guilty Plea Agreement
20 and how that related to sentencing?

21 A No.

22 Q No?

23 A I mean, in terms of the sentencing range that he'd be facing. And I
24 think by the time we discussed all of that we already had the PSI, so we had gone
25 over the PSI together.

1 Q Do you recall what the recommendation was in the PSI?

2 A Not as I sit here today.

3 Q Okay.

4 A I do recall it was less than what he ultimately received.

5 Q Thank you. Did you discuss for him the potential penalties in the case
6 all the way up to the maximum penalties in the case?

7 A Yes.

8 Q Did you discuss for him what you had as an opinion as to what you
9 thought based upon your training and experience what you thought he would get?

10 MR. SWEETIN: Just foundation, are we talking about sentencing now?

11 MR. GAMAGE: Yes, we are.

12 MR. SWEETIN: Before sentencing?

13 MR. GAMAGE: I just said that earlier.

14 MR. SWEETIN: Okay, I missed it. Sorry.

15 BY MR. GAMAGE:

16 Q You may answer. If you need me to repeat the question --

17 A I'm sorry, can you repeat?

18 Q I sure will.

19 A Yes.

20 Q Did you discuss -- okay, I believe you answered the question did you
21 discuss what the maximum potential penalties were for the case and you said yes, is
22 that correct?

23 A That's correct.

24 Q Okay, and then I asked did you discuss based upon your training and
25 experience what you thought was going to be the sentence in this case? Did you

1 prognosticate so to speak?

2 A I did not prognosticate, but I did discuss the possibilities with Mr.
3 Looper. And I do recall saying that it was favorable that his psychosexual evaluation
4 came out as a low risk to reoffend.

5 Q Okay. Did you discuss with Mr. Looper what the nature and
6 requirements of the registration as a sex offender process, what that entailed?

7 A In terms of like -- I'm sorry, can you repeat that? I --

8 Q Sure, it's -- it was a bad question. I apologize. Did you discuss with Mr.
9 Looper what sex offender registration processes would be put in place related to his
10 case?

11 A Yes.

12 Q Do you recall what you told him?

13 A Not precisely, but we did go over, if I recall correctly, the nature of
14 lifetime supervision.

15 Q Okay, did you discuss with him the procedural aspects of being on
16 registration requirements?

17 A In great detail no.

18 Q And what do you mean by -- well let me ask you this. What level of
19 detail did you -- do you recall giving to Mr. Looper related to the registration
20 requirements?

21 A That he would have to register as a sex offender, that he would have
22 the keep in touch with the authorities, and that there would be certain limitations on
23 his rights, including gun ownership and the like. But I don't recall if I told him every
24 form he had to fill out or [indiscernible] --

25 Q Okay, did you tell him that it would -- there would be an additional more

1 difficult process to get off of parole or probation based upon, you know, results of
2 psychosexual or medical examinations?

3 MR. SWEETIN: And, Judge, I'm -- I let this go on for a while but I'm not sure
4 what the relevance of this is. We're talking about the Defendant's knowledge when
5 he entered his guilty plea. And he's asking questions in regards to what she
6 discussed at the time of sentencing. I'm not sure what the relevance is.

7 THE COURT: Oh.

8 MR. GAMAGE: Well, Judge, the relevance goes to the body of information
9 the Sgro Law Firm imparted to Mr. Looper related to the sentencing and what he
10 knew or didn't know as to whether or not he wanted to enter a guilty plea. It is his
11 right to seek to withdraw the guilty plea all the way up until sentencing is imposed.
12 And so he had an opportunity prior to that. And the Courts, as you're aware Judge,
13 are more open to withdrawing guilty pleas as long as they're done prior to
14 sentencing. And so I see that it's absolutely relevant and goes right to the heart of
15 our claims. And we're just trying to find out what this attorney spoke to Mr. Looper
16 about so that he understood what his rights and the consequences potentially were.

17 MR. SWEETIN: I don't know that that's in the pleadings, but that's fine if the
18 Court wants to allow the testimony.

19 THE COURT: I'm going to overrule it for now. Keep going.

20 MR. GAMAGE: Thank you, Your Honor.

21 BY MR. GAMAGE:

22 Q So did you discuss the procedural aspects of -- the heightened
23 procedural aspects related to being on sex offender registration to get off of sex
24 offender registration relating to the charges that he pled to?

25 A [Indiscernible] question and you guys are breaking up.

1 Q Am I cutting out?

2 A I apologize.

3 Q Okay, let me try it again.

4 A Yeah, you did --

5 Q Okay, can you hear me now?

6 A Yes, I can.

7 Q Okay, good. Did you discuss with Mr. Looper what hurdles you had to
8 get over to get off of registration as a sex offender based upon the charges that
9 were --that he had pled to?

10 A I'm sorry, I think I don't understand the question.

11 Q Okay.

12 A Did I discuss with him how to get off of lifetime supervision?

13 Q Yes.

14 THE COURT: Right, so you keep saying registration. So are you talking
15 about registration or supervision or both?

16 MR. GAMAGE: Both I guess, Judge, I'm sorry. It's an in -- unartful question, I
17 apologize.

18 THE COURT: Because they're two different requirements.

19 MR. GAMAGE: Yes, Judge.

20 BY MR. GAMAGE:

21 Q So did you discuss -- okay, let me ask you this -- what are the
22 consequences and procedural aspects of being placed on lifetime supervision and
23 being required to register as a sex offender in the State of Nevada?

24 A So you want to know what in terms of the limitations that they have as a
25 -- for supervision?

1 Q I'd like you to describe for the Court your knowledge at the time you
2 spoke with Mr. Looper about what the registration requirements are and what the
3 supervision requirements are for purposes of the charge that Mr. Looper had.

4 A My understanding of the registration requirements is that he has to
5 register and keep a current address. And as far as supervision that there are certain
6 limitations on things that he can do, where he can live, and whether he can own a
7 firearm, certain jobs that he can hold, etcetera.

8 Q What are the --

9 A I don't recall the -- specifically each and every aspect of the registration
10 or supervision, no.

11 Q What are the limitations on or restrictions on Mr. Looper's liberty that
12 you just discussed related to the supervision or registration requirement?

13 MR. SWEETIN: I think that she's -- the question has been asked and
14 answered in regards to her knowledge of the statute. She relayed that.

15 MR. GAMAGE: I was going from the general to the specific, Judge. Now I'm
16 going to ask what specific things did she or did she not discuss with Mr. Looper as
17 to how he would be restricted, you know, under the statute. That's all.

18 THE COURT: Alright, so ask that then.

19 BY MR. GAMAGE:

20 Q Okay. Ms. Weaver, did you then talk to Mr. Looper about how
21 specifically his liberty interest would be restricted relating to being a sex offender
22 and registering and being under supervision?

23 A I do remember discussing it in very general terms. Yes, in terms of
24 where -- that he would have to register, that he would be limited, you know, in his
25 ability to own a firearm, in his ability to live in certain neighborhoods, and to obtain

1 certain employment.

2 Q Did you discuss why he would be limited from going in certain places or
3 living in certain neighborhoods as you just testified?

4 A Because he would be a registered sex offender.

5 Q Did you ever discuss the wording of a place or structure that is
6 designed primarily for the use by or for children with Mr. Looper as a place --

7 A No, I didn't.

8 Q I'm sorry. I talked over you, I apologize.

9 A No, I did not go over it.

10 Q I keep talking over you, Ms. Weaver, I'm sorry. I apologize. So
11 basically did you ever discuss that phraseology as part of the statute with Mr.
12 Looper and how that would affect his liberty interest?

13 A No, I did not read the statute to him.

14 Q Thank you. And did you meet with Mr. Looper prior to sentencing, like
15 the day of or day before sentencing?

16 A I don't recall when it was exactly, but I did meet with him I think at least
17 twice before sentencing.

18 Q Okay, did you prepare a sentencing memorandum?

19 A Yes, I did.

20 Q Okay, and did you file it?

21 A Yes, I did.

22 Q And as part of your arguments for sentencing what were your main
23 presented arguments?

24 MR. SWEETIN: And again I'm going to object. This is not in the moving
25 papers in regards to ineffective assistance for the manner in which sentencing was

1 handled. The sole issue I thought that we were here for was just in regards to the
2 entry of guilty plea and actually three very specific delineated issues.

3 MR. GAMAGE: I'm just trying to paint a picture, Your Honor. I'm not going to
4 take much longer.

5 THE COURT: I appreciate what Mr. Sweetin is saying about what the claims
6 are, but for purposes of this hearing I'm going to overrule the objection and let's hear
7 about that.

8 MR. GAMAGE: Thank you, Judge, I'll be very brief.

9 THE COURT: Alright.

10 BY MR. GAMAGE:

11 Q So leading up to -- right to before the sentencing hearing had you
12 discussed what your strategies were going to be at the sentencing hearing with Mr.
13 Looper?

14 A Yes.

15 MR. GAMAGE: Okay, and strike that. I'll pass the witness.

16 THE COURT: Cross.

17 MR. SWEETIN: Thanks.

18 **CROSS-EXAMINATION**

19 BY MR. SWEETIN:

20 Q Melinda, I just have a few questions for you. I wanted to first talk about
21 you mentioned earlier that when you initially met with the Defendant that you had
22 the benefit of reviewing the file, is that correct?

23 A That's correct.

24 Q And we would be talking about this was long before the guilty plea or
25 the sentencing. This is when you initially met with him, is that correct?

1 A That's correct.

2 Q Now fair to say that was a while back, is that correct?

3 A Yes it was.

4 Q And would it also be fair to say in preparation for today's proceeding
5 you didn't do a detailed evaluation of exactly what all the evidence was?

6 A No, I did not. I don't have access to it.

7 Q Okay, and in regards to the evidence in this case isn't it true that the
8 Defendant's wife actually saw a photo on the cell phone of a vagina. Is that how the
9 case kind of starts?

10 A That's what I recall, yes.

11 Q Okay, and when she saw the photo of the vagina on her -- on the
12 Defendant's cell phone she recognized her daughter's pajamas and her daughter's
13 sheets, would that be accurate?

14 A I don't recall what it is about the photo that she recognized, but she
15 believed it or the allegations were that she believed it to be her daughter.

16 Q And would it be fair to say -- do you recall that as she observed the
17 photos she saw one photo with a finger that she observed to be her husband, the
18 Defendant's finger?

19 A I believe that was --

20 MR. GAMAGE: Objection foundation.

21 THE COURT: Hold on, hold on.

22 MR. GAMAGE: Objection, foundation, assumes facts that haven't been
23 raised yet. I mean, --

24 MR. SWEETIN: Well no I think that he particularly elicited this particular
25 witness' basically opinion of the strength of the case. I think I have the opportunity

1 to explore that.

2 MR. GAMAGE: But, Judge, I think he does but from the standpoint of what
3 the actual evidence is, not that there was an assumption that it was the husband's
4 finger. There was no direct -- I don't believe it was part of the case there was any
5 direct evidence as to being able to identify the hand related to the husband.

6 THE COURT: I don't know, --

7 MR. GAMAGE: That's my only point.

8 THE COURT: -- so for purposes of this it's just -- I guess it's her thought
9 process, so --

10 MR. GAMAGE: Yes.

11 THE COURT: I'm going to allow him to ask her about her thought process
12 and recollection.

13 MR. GAMAGE: Thank you, Your Honor.

14 BY MR. SWEETIN:

15 Q Now do you recall that as a result of her finding this that she confronted
16 the Defendant about it?

17 A I recall that that was the allegation.

18 Q Okay, and do you recall that upon her confronting the Defendant that he
19 took the cell phone that she was looking at and broke it and put it in under the water
20 in the toilet. Do you remember that?

21 A I do remember that was the allegation.

22 Q Okay. And do you remember that at that particular time that the
23 Defendant choked the mother of the victim to unconsciousness and drug her to the
24 bedroom where she and the other family members were held for an extended period
25 of time rather than call the police?

1 A I recall that there was a domestic violence allegation component of this
2 case. But I don't recall everything that you specifically talked about, no.

3 Q And do you recall that subsequently the police were called
4 surreptitiously by one of the children and did come to the residence?

5 A I don't specifically recall that.

6 Q And upon the police coming to the residence the Defendant was taken
7 into custody for various violent offenses that occurred there at the residence. Would
8 that be correct?

9 A I do recall that -- he was brought into custody. I don't recall anything
10 else.

11 Q Okay. Do you recall that at a later time that the -- that although the
12 picture that was observed on the phone could not be retrieved from the phone
13 because it was broken. Do you remember that?

14 A No, I don't recall that.

15 Q Okay. Do you recall that the picture was ultimately retrieved from the
16 Cloud as being downloaded from the Defendant's phone?

17 A Yes, I do recall that.

18 Q Okay. And do you recall when it was retrieved that the time that the
19 pictures were taken was documented by the Cloud?

20 A I don't specifically recall that.

21 Q And do you recall that upon that being -- the picture being found and
22 that time being documented it was ascertained that the Defendant was alone at
23 home or was at home with the victim in the case on that evening?

24 A I recall that that was the allegation.

25 Q And do you recall that upon review with the witnesses of that particular

1 day that was the day in which the victim was given a drink by the Defendant which
2 made her feel light headed and caused her to go to sleep?

3 A I recall that that was the allegation.

4 Q And do you recall that the following morning that the child woke up and
5 that her underwear and her pajama bottoms were wet?

6 A I do recall that as an allegation.

7 Q Okay. And do you recall that there was evidence that in fact the
8 Defendant had obtained an amount of GHB?

9 A I do not recall that as an allegation.

10 Q So there's a lot of things about the case -- it sounds like you're a little
11 fuzzy about the case at this point, is that correct?

12 A Yes, it's been quite a while.

13 Q As you sit here today do you think you're really qualified to make an
14 assessment in regards to at the time the strength of this particular case given your
15 fuzzy memory of this?

16 A I think I can recall that at the time I thought that the case was
17 defensible. Whether I can confer that I currently think its defensible I cannot at this
18 time.

19 Q Okay. Now there was questions asked of you in regards to your
20 conversations with the Defendant at or around the time of sentencing. Do you
21 remember those questions that were asked?

22 A Yes.

23 Q Okay. Now at the time of sentencing would it be fair that you had an
24 opportunity to have some discussions with the Defendant as you've described?

25 A Yes, I did.

1 Q Now in the course of those discussions did the Defendant ever indicate
2 to you that he had any confusion with the consequences of his guilty plea?

3 A Not that I recall.

4 Q Okay. In fact at that particular time if the Defendant had indicated to
5 you any sort of confusion or acquiescence in regards to his plea of guilty what would
6 you have done in response to that?

7 A Well since it was before sentencing my standard practice would always
8 be to offer to write a motion to have new counsel appointed so that he could
9 investigate any motion to withdraw guilty plea issues.

10 Q So that's what you would have done if in fact the Defendant had any
11 acquiescence to his plea of guilty or questions in regards to it?

12 A Absolutely.

13 MR. SWEETIN: Okay. Thanks, nothing further.

14 THE COURT: Any redirect?

15 MR. GAMAGE: Court's indulgence, Judge.

16 THE COURT: Yep.

17 **REDIRECT EXAMINATION**

18 BY MR. GAMAGE:

19 Q Ms. Weaver, as to the questions the government just gave you related
20 to what you would or would not have done that assumes that Mr. Looper was fully
21 informed, is that correct?

22 A I don't understand.

23 Q Okay. I apologize. That assumes that Mr. Looper had been fully
24 informed as to the rights and consequences related to his plea at that time or before
25 he entered into the plea, is that correct?

1 A I'm sorry, I still don't understand the question is it -- are you asking --

2 Q Yeah, let me back up.

3 A -- he would only ask me about it if he was informed or --

4 Q Correct, if he had knowledge that there was a problem certainly he then
5 could bring it to your attention. But if he didn't have knowledge there'd be no reason
6 for him to bring it to your attention, isn't that correct?

7 A I mean, if you want me to speculate yeah I guess that's the case.

8 Q Well I'm just saying a person who is armed with information then has
9 the ability to bring a question right? If they're not armed with information they don't
10 have the ability to bring a question do they?

11 A Generally I agree with that.

12 Q Okay. Do you recall that there was some confusion at the -- as part of
13 your research into preparing for sentencing do you recall that there was some
14 confusion at sentence -- or at the guilty plea -- change of plea hearing related to
15 what requirements were going to be imposed or potentially imposed for lifetime
16 supervision?

17 A I don't think I was present for that.

18 Q I'm just saying that --

19 A I believe that was Ms. Kratsas.

20 Q I'm just asking you as part of your preparations for sentencing did you
21 come across that information?

22 A Oh I apologize. Could you repeat --

23 Q Sure.

24 A -- the information that --

25 Q As part of your preparation for sentencing did you come across any

1 information that there existed some confusion at the change of plea hearing related
2 to what terms of supervision would be imposed potentially against Mr. Looper?

3 A I don't recall that.

4 MR. GAMAGE: Thank you.

5 THE COURT: Are you going to be --

6 MR. GAMAGE: Court's indulgence.

7 THE COURT: And I apologize. Are you going to be calling Ms. Barbeau?

8 MR. GAMAGE: Yes.

9 THE COURT: Okay. Alright, keep going.

10 MR. GAMAGE: Court's indulgence.

11 THE COURT: Yeah.

12 BY MR. GAMAGE:

13 Q Ms. Weaver, to do you recall what the outcome of the sentencing
14 hearing was?

15 A The exact sentencing range, no I don't recall.

16 Q Okay, would it be fair to say that Mr. Looper basically got a very, very
17 high sentencing within the range of potential sentencing?

18 A He got more than the PSI recommended. I do recall that.

19 Q Do you recall him speaking with you after the sentencing?

20 A I don't specifically recall, but I imagine it probably did happen.

21 Q Did you tell him that he could -- based up on the representations and
22 the discussions that he had with Ms. Barbeau did you tell Mr. Looper that he could
23 file for a writ of habeas corpus related to ineffective assistance of counsel based
24 upon what you discussed with him?

25 A I don't think I said that.

1 MR. GAMAGE: Fair enough. Thank you.

2 THE COURT: Any further cross?

3 **RECROSS-EXAMINATION**

4 BY MR. SWEETIN:

5 Q I just want to be clear. Was there ever, to your memory, any indication
6 from the Defendant that he was not happy with his counsel or his representation?

7 A Not that I specifically recall.

8 Q Okay. And you've indicated that if in fact you had become aware of that
9 along the way there are certain steps that you have taken, is that correct?

10 A Absolutely.

11 Q And you didn't take those steps?

12 A That's correct.

13 Q Thank you.

14 THE COURT: Anything further?

15 **FURTHER DIRECT EXAMINATION**

16 BY MR. GAMAGE:

17 Q Ms. Weaver, the process of -- the creation of a conflict of interest based
18 upon a client's dissatisfaction in the context of an appointed case is a complicated
19 question is it not?

20 A Yes it is.

21 Q Okay. And I asked this based upon your training and experience.
22 You've probably dealt with or represented people that were mentally ill, is that
23 correct?

24 A Yes, many.

25 Q And so your representation of them doesn't hinge on whether or not

1 they voice to you whether they're dissatisfied with their representation does it?

2 A I'm sorry, I guess I don't -- are you saying that you don't have to switch
3 counsel for a motion to withdraw guilty plea when there's issues with their
4 competence versus when there's a conflict?

5 Q No, what I'm saying is the decision by you as counsel as to whether or
6 not a conflict has arisen between you and the client --

7 A Uh-huh.

8 Q -- is a complex one and doesn't necessarily occur just because
9 someone says I'm not happy with you as my attorney, is that correct?

10 Q Yes, that's correct.

11 MR. GAMAGE: Thank you. No more -- no further questions.

12 THE COURT: Anything further?

13 MR. SWEETIN: No, Your Honor.

14 THE COURT: Thank you, ma'am. I do appreciate you making the time to be
15 available for us. Thanks very much. You can disconnect however that happens.

16 THE WITNESS: Alright, thanks Your Honor.

17 MR. GAMAGE: Thank you.

18 THE COURT: Okay, so next witness.

19 MR. GAMAGE: Is Ms. Barbeau.

20 MR. SWEETIN: She's outside.

21 MR. GAMAGE: Okay.

22 THE MARSHAL: If you could follow me. If you could step up into the box.
23 You can place your items down. Remain standing.

24 THE COURT: Alright, hold one. She's turning off the phone.

25 THE WITNESS: I'm trying to.

1 THE COURT: Yes.

2 THE WITNESS: It's smarter than me. Let me get my glasses.

3 THE MARSHAL: Raise your right hand. Face that young lady right there.

4 **MARJORIE KRATSAS**

5 [having been called as a witness and being first duly sworn, testified as
6 follows:]

7 THE CLERK: Thank you. Please be seated.

8 THE WITNESS: Thank you.

9 THE CLERK: State your full name, spelling your first and last name for the
10 record.

11 THE WITNESS: Sure, Marjorie Elizabeth Kratsas, M-A-R-J-O-R-I-E, K-R-A-T-
12 S-A-S.

13 **DIRECT EXAMINATION**

14 BY MR. GAMAGE:

15 Q Good afternoon, Ms. Kratsas, my name is Bill Gamage and I'm an
16 attorney that represents Mr. Looper for purposes of his writ of habeas corpus before
17 the Court today. Do you know Mr. Looper?

18 A No, I was involved in his case.

19 Q So you know of him?

20 A Correct.

21 Q And what was your relation to him as part of handling that case?

22 A I was one of the defense attorneys assigned to the case while he was
23 with Sgro.

24 Q How long at that time -- again your representation of Mr. Looper, how
25 long had you been an attorney?

1 A You know I cannot remember when I first became involved in Mr.
2 Looper's case. But I can tell you that I was admitted to the bar May 2013.

3 Q Okay.

4 MR. GAMAGE: Court's indulgence.

5 BY MR. GAMAGE:

6 Q If I was to represent to you that the date of February 22, 2012 as the
7 charging date of Mr. Looper would you -- would that help you identify the timeframe?

8 A I wouldn't disagree with your representations.

9 Q Now you were not the first attorney to represent Mr. Looper were you?

10 A That is correct; I was not.

11 Q Who came before you?

12 A Well I believe Mr. Sgro was always on the case. I don't know the extent
13 he was on the case.

14 Q I'm talking about even before the Sgro Law Firm

15 A I have no idea.

16 Q Okay, fair enough. Do you recall about what month or year you started
17 work on the case as the primary attorney or the -- well the primary attorney under
18 Mr. Sgro.

19 A I don't know what you mean by primary attorney.

20 Q Okay, let me ask you about your office practices. How do you assign
21 cases? How did you assign cases at the Sgro Law Office?

22 A Mr. Sgro assigned the cases.

23 Q Okay, and so what did it mean when he assigned a case?

24 A Well generally what he would do is say rather task based. Of course I
25 did do a lot of the work on Mr. Looper's case. However, I was -- I guess you would

1 call me an associate. I also worked with Melinda Weaver and Mr. Sgro and we
2 would discuss the case and go from there.

3 Q So it was not your understanding that you were to handle the
4 representation of Mr. Looper from that point forward until told otherwise?

5 A It was a collaboration of efforts.

6 Q Okay.

7 A As far as who is going to be the primary one I believe would be Mr.
8 Sgro is -- he would be the head trial attorney. And then if a case proceeded to trial I
9 don't -- we never had the discussion, but it was always my presumption that it would
10 be Mr. Sgro and Ms. Weaver. But I did do a lot of the labor as the associate, yes.

11 Q So you didn't know what your duties were related to Mr. Looper, is that
12 correct?

13 A I wouldn't agree with that, no.

14 Q Well it sounds like you were given specific tasks to do for Mr. Looper,
15 but you weren't given tasks to somewhat access the case and take action as you felt
16 was appropriate as an attorney?

17 A No in a collaborative effort I of course would say what I believed
18 needed to be done. And we would meet and discuss and we would develop plans
19 and we would go from there.

20 Q But it wasn't your authority -- I'm taking from what you're saying, it
21 wasn't your authority to just go do that? You had to discuss it in this collaborative
22 situation and then be allowed to do that by Mr. Sgro, is that correct?

23 MR. SWEETIN: Judge, I think the question's been asked and answered. I --

24 THE COURT: Overruled.

25 BY MR. GAMAGE:

1 A So what we would do is we would discuss. We would decide what
2 motions or what things to do and I guess can I go out, draft a motion, and just file it
3 on my own initiative at that time? No, Mr. Sgro would stop, review it, and ultimately
4 make the decision.

5 Q I'm just trying to understand the nature of what you felt your authority
6 was. Because there's a difference between an associate like -- you know, because
7 I've been there too. Where it's your first year or something like that and you're told
8 hey go do this motion, you know. And if you're lucky you get to argue it, or to the
9 point where like I am now today. The case comes into my office. I have to analyze
10 it. I have to evaluate it and I have to create a strategy. Where were you in that
11 spectrum is my question?

12 A Like I would say we would have meetings. We would discuss the
13 developments of the case and then we would make efforts to go off what we
14 discussed and if a motion needed to be filed of course that would come up. And
15 whoever made that decision I don't know. I guess I can't answer it more than I
16 have.

17 Q Okay. So it's fair to say then you were not necessarily -- you know
18 what strike that, Judge. I'll just let the Judge interpret that as she may.

19 THE COURT: Can I just interrupt for one second? Basics, was your name at
20 the time Marjorie Barbeau?

21 THE WITNESS: Yes, Your Honor.

22 THE COURT: Okay, thank you. Go on.

23 MR. GAMAGE: I apologize, Judge.

24 THE COURT: Just want to be clear who we have in court.

25 MR. GAMAGE: Thank you, Judge, I apologize.

1 BY MR. GAMAGE:

2 Q Okay, so at some point in time you began to represent Mr. Looper. As
3 part of your representation, as part of your contact with him what did you do initially?
4 Let me put in kind of -- what did you do in the first meeting?

5 A With Mr. Looper?

6 Q Correct.

7 A I don't recall the first meeting I had with Mr. Looper.

8 Q Do you recall any meetings you had with Mr. Looper?

9 A Yeah, I do recall meeting him in jail. I do recall meeting him in the
10 courtroom before and after hearings.

11 Q Do you -- okay so can you tell us the first instance of meeting Mr.
12 Looper in the jail that you recall? Can you tell us about what happened at that
13 meeting?

14 A You know it's been so long. I met with him so many times in jail. I can't
15 tell you the first meeting and what the context of that meeting was. I mean, I could
16 speculate it was me introducing myself. But I can't even tell you who was with me --

17 Q Okay, fair enough.

18 A -- or if anybody was.

19 Q Okay, fair enough. Can you tell the Court what sorts of information you
20 did discuss with Mr. Looper over the range of your representation?

21 A His case of course.

22 Q Anything more specific other than the fact that he's in a case? Did you
23 talk about the evidence? Did you show him documents? Did you discuss with him
24 offers from the District Attorney's Office? Did you discuss with him the potential for
25 a defense on a particular issue? I'm just trying to find out what you -- your range of

1 discussions were with Mr. Looper.

2 A Yes, we discussed all those things.

3 Q Okay. Did you obtained or review any information the District
4 Attorney's Office gave the Sgro Law Firm in related to Mr. Looper's case?

5 A I'm not sure what your referring, information from the prosecutor's
6 office? I do recall -- I mean, I don't know specifically what you're getting at but I did
7 do a file review at Ms. Fleck's office. I do remember going and actually looking in
8 her file.

9 Q Okay.

10 A But aside of what they -- can you give me a specific document as what
11 they would have given us?

12 Q Well now I'm asking do you recall reviewing the file in Sgro's -- in Mr.
13 Sgro's office and looking at what the discovery was that was given from the District
14 Attorney's Office to the defense counsel and reviewing that? Do you recall that?

15 A Sitting here today I don't specifically recall.

16 Q Okay. Alright, do you recall what the allegations where against Mr.
17 Looper?

18 A I did refresh my recollection and I could tell you generally some of them.

19 Q But before you did that you didn't have any independent knowledge as
20 to what the allegations were.

21 A Well I got the subpoena back in December I believe --

22 Q Okay.

23 A And when I first got the subpoena I remembered Mr. Looper's name.

24 Q Uh-huh.

25 A I remember just very vague aspects of the case, not specific charges or

1 evidence. Just, you know, some factual allegations. And that was pretty much the
2 extent of it.

3 Q Okay, and what was that recollection?

4 A Mr. Looper I remember being before Judge Cadish. I remember the
5 State alleging that there was a child. I remember the State alleging that there was --
6 the child was given a substance and stuff that flew from that, but as far as anything
7 more specific no.

8 Q Fair enough. At some point during your representation did a
9 representative of the District Attorney's Office make a plea offer?

10 A I'm sorry. Can you say that again?

11 Q At some point during your representation of Mr. Looper did somebody
12 in the District Attorney's Office make a plea offer through you to Mr. Looper?

13 A Yes, the DA's attorney did. There was ongoing discussions of offers.
14 So there was, I believe, --

15 Q Oh, okay.

16 A -- more than one.

17 Q Okay, let's start at the beginning of when the discussions occurred.
18 What sort of ongoing discussions occurred and where did it start and where did it
19 end?

20 A I -- you know, I don't even recall. I can't recall if they were ongoing
21 when I stepped into the case.

22 Q Okay.

23 A I don't remember how long they lasted. I just remember there being
24 ongoing hey what about this, no this has to go, things of that nature. But I don't
25 remember how often and how long they were going.

1 THE COURT: Let me just, sorry, I just want to be clear because you weren't
2 in the room when we had this discussion that Mr. Looper, because of the nature of
3 this petition, has waived his privilege with respect to communications about the plea
4 deal.

5 THE WITNESS: Okay.

6 THE COURT: So just so you don't have to worry about that.

7 THE WITNESS: Okay, I'm sorry I thought we were talking about discussions I
8 was having with the DA's Office. Did I get off track?

9 THE COURT: I don't know.

10 MR. GAMAGE: No.

11 THE COURT: I don't if --

12 THE WITNESS: But thank you, Your Honor, yes.

13 THE COURT: I just in general before we proceed and have this conversation
14 I want you to know that he has waived his privilege in that regard.

15 THE WITNESS: As far as the plea, yes, Your Honor.

16 MR. GAMAGE: And more specifically, Judge, I believe our discussion
17 entailed and please correct me if I'm wrong, Your Honor, that the waiver is limited in
18 the sense that it only relates to the claims or defenses related to his writ that he's
19 filed before the Court. It's not all encompassing. And so I'd ask you to maintain
20 your answers into the end of the area related to his claims, which is ineffective
21 assistance of counsel for purposes of entering into the plea agreement because he
22 feels that he was fully informed as to the rights and consequences that came out of
23 the agreement. Okay, do you understand that?

24 THE WITNESS: I do but --

25 MR. GAMAGE: Okay.

1 THE WITNESS: -- when you say contained within the writ I'm not that familiar
2 with the writ so.

3 THE COURT: It's not going to be your job to know that.

4 MR. GAMAGE: Yeah.

5 THE WITNESS: Okay.

6 MR. GAMAGE: I just wanted you to know what the claim was. And I do
7 apologize. I just wanted make it clear. So --

8 BY MR. GAMAGE:

9 A Okay, yeah so the DA's Office and I went back and forth quite often.
10 Now when the negotiations with the DA's Office began, whether they were ongoing
11 when I entered, I can't recall.

12 Q Okay, but as you first got offers or discussions going with the District
13 Attorney's Office what was the nature of the offers? Do you recall that?

14 A I don't recall.

15 Q Okay, at some point it sounded like the District Attorney assigned to the
16 case and you came to some firm terms as to potentially how the case would be
17 plead out, is that correct?

18 A That would be correct.

19 Q Okay, and that -- those terms were reduced to writing into what's called
20 a guilty plea agreement, is that correct?

21 A That's correct.

22 Q Okay, do you remember receiving a copy of the Guilty Plea
23 Agreement?

24 A I do not recall, no.

25 Q Okay, do you remember taking a copy of that Guilty Plea Agreement to

1 Mr. Looper?

2 A I do recall that, yes.

3 Q Okay, and where did that occur?

4 A I believe I took that to jail.

5 Q Okay, the Clark County Detention Center?

6 A Correct.

7 Q Okay.

8 A That's the one across the street, yes.

9 Q Correct, that's the one across the street. Yes.

10 A Yes.

11 Q And so when you went to the Clark County Detention Center and met
12 with Mr. Looper about how long did that meeting last when you discussed the Guilty
13 Plea Agreement?

14 A That was a very long meeting, because I recall bringing the file with me
15 and making Mr. Looper go through the file. And I watched him turn page to page to
16 page. And then after that we moved on to the Guilty Plea Agreement. So that was
17 a very long meeting.

18 Q And just in the context of what you mean by long can you maybe
19 estimate for the Court the amount of hours or time?

20 A It would be hours.

21 Q 2, 5, did the jail come and knock on the door and say hey you got to get
22 out, you know, we're putting everybody to bed or --

23 A No --

24 Q -- or anything like that or --

25 A -- never experienced that there.

1 Q Okay.

2 A It would be a very gross estimation almost speculation, but I would
3 estimate 2-3.

4 Q Okay, fair enough. Okay, so you handed him the file and earlier we
5 discussed discovery and things like that. Prior to handing him the file did you review
6 the discovery or the information in the file that you were going to go over with him?

7 A I was familiar with the file yes.

8 Q Okay, and did he have questions for you at the time as he was going
9 through the file relating to the evidence against him.

10 A I don't recall if he had questions as he was actually hands in the file --

11 Q Uh-huh.

12 A -- but during that meeting he certainly did have a lot of questions, yes.

13 Q Okay. And is it your impression as you sit here today that you did your
14 very best to answer all of his questions?

15 A Of course.

16 Q Okay, were all of those questions you -- do you recall related to the
17 evidence or related to the terms of the agreement?

18 A I believe they were across the board.

19 Q Okay, alright, fair enough. So let's talk about the agreement. Do you
20 recall what the terms are -- were of the agreement?

21 A I did briefly review that in December.

22 Q Uh-huh.

23 A And I -- you know, when I review things in December I didn't spend a lot
24 of time because I had --

25 Q It's not necessarily a quiz.

1 A Okay.

2 Q Let me be more specific for you. With the nature of the charges he was
3 going to plead to okay did certain consequences arise for purposes of sentencing?

4 A In reviewing -- just so I get it right, in reviewing the guilty plea
5 agreement which I did also. I reviewed it for about 5 minutes today.

6 Q Okay.

7 A Were there consequences?

8 Q Yes, I mean, what sort of sentencing options were going to come into
9 play based upon the charges that he pled to?

10 A Sentencing options, I don't know what you mean I'm sorry.

11 Q Okay, what was the potential sentence -- the potential maximum
12 sentence Mr. Looper could have got based upon the plea that he entered into?

13 A I can't recall.

14 Q Do you understand the nature of lifetime supervision and registration as
15 a sexual offender related to the charges Mr. Looper pled to?

16 A I was much more familiar then than I am now yes.

17 Q Okay.

18 A At the time I was familiar.

19 Q Okay, as you sit here today do you recall what you explained to Mr.
20 Looper about those things?

21 A I do recall we discussed it. I do recall that he had coherent questions
22 regarding both of those. But as far as specifics I do not recall. And I know that he
23 waived for the purpose of that. But, I mean, I'm not comfortable waiving anything
24 very specific.

25 THE COURT: He did. It's his privilege. I mean, if you remember anything

1 specific about registration or supervision that's what we're getting at.

2 BY MR. GAMAGE:

3 A Well I do recall when he was under the belief that had he moved out of
4 state he wouldn't have to do those things. And I assured him that was not the case.

5 Q Okay, anything else?

6 A That just stood out to me because it was, you know, --

7 Q Okay.

8 A -- I remember he did have questions about having to check in and the
9 things he could do for a living.

10 Q Do you recall what you told him?

11 A I remember we did discuss it at how it would affect him, but I can't
12 remember the exact language.

13 Q Do you -- as you sit here today would you be able to tell the Court how
14 those requirements would affect his ability to get a job?

15 A I can't remember specifically what I told him, but I know we did have a
16 long conversation on how all of those with lifetime supervision and that would affect
17 him, yes we did.

18 Q Did you discuss with Mr. Looper what specific job restrictions would
19 occur?

20 A You know --

21 Q And I'm just -- I'm -- you seem like you may know or not know and I'm
22 not trying to get into having you change your answer. I'm just trying to get you to
23 see if you can recall. I know it's hard.

24 A You know, all I recall is he wanted to return to bouncing or boxing. And
25 I can't remember much more than that.

1 Q Okay, do -- okay, so you're saying you don't recall whether or not you
2 told him that he couldn't box or he couldn't bounce because of his plea?

3 A No I know we did have a conversation I just can't remember exactly
4 what I told him --

5 Q Fair enough.

6 A -- and how it would affect those particular careers.

7 MR. GAMAGE: Okay. Court's indulgence.

8 BY MR. GAMAGE:

9 Q During the span of representation when you were involved in this case
10 what was Mr. Looper's -- what was his marching orders so to speak for his counsel?
11 Did he want to go to trial or did he want to plead the case? Did he want you to
12 facilitate pleading the case?

13 A You know, I don't remember. I remember that we were filing a lot of
14 motions and heading for trial. But how it went from trial to the guilty plea agreement
15 I don't remember.

16 Q Based upon your training and experience did you feel that that the
17 agreement, or the offer that you had obtained from the District Attorney's Office was
18 a good offer?

19 A I believe it was the best we were going to get.

20 Q Okay. Do you believe his case was defensible?

21 A Meaning --

22 Q Based upon the weight of the evidence -- let me step back. Do you
23 recall the specific weights, weight of the evidence against Mr. -- your assessment of
24 the specific weigh of the evidence against Mr. Looper?

25 A I believe that might be a better question for Mr. Sgro.

1 Q Okay, fair enough. So that's a no, is that correct?

2 A That wasn't my answer. No is not my answer. A defensible case, the
3 degree of evidence, I believe that we did success there were some significant
4 hurdles had we gone to trial.

5 Q Do you recall specifically what the evidence was against Mr. Looper as
6 you sit here today?

7 A Independently sitting here today, no. I don't recall.

8 Q Alright. Was an investigator ever assigned to this matter?

9 A An investigator meaning?

10 Q Did you hire an investigator to work on Mr. Looper's case or did the
11 Sgro Law Offices hire an investigator to work Mr. Looper's case?

12 A The private investigator?

13 Q Yes.

14 A Yes.

15 Q Do you remember what his name was?

16 A Probably when I leave here.

17 Q Okay. Alright, do you remember any things he was advised to
18 investigate. Was he told to do anything specific on this case? Do you recall that?

19 A Man, and I know we also hired from -- you know, I remember speaking
20 to him a lot and I just don't recall what we discussed. He was --

21 Q Okay.

22 A What did he have him do? I don't recall.

23 Q Okay. Why was it that you didn't -- well why was it that you came off of
24 the case and Ms. Weaver then did the sentencing?

25 A I was no longer with the firm after -- I don't remember the date.

1 Q Is there a reason why you left the firm?

2 A We didn't -- just a difference in career paths.

3 Q Okay, so you're doing a different type of law now?

4 A Correct.

5 MR. GAMAGE: Okay. Alright, pass the witness.

6 THE COURT: Cross.

7 MR. SWEETIN: Thank you, Judge.

8 **CROSS-EXAMINATION**

9 BY MR. SWEETIN:

10 Q Marjorie, I just want to walk through with you just a little bit. Would it be
11 fair to say that you represented the Defendant over a number of months prior to the
12 guilty plea agreement?

13 A Yes, that is correct.

14 Q And over that time would it be fair to say that you made a number of
15 appearances arguing various motions in court on behalf of the Defendant?

16 A That is correct.

17 Q Over that period of time prior to the Guilty Plea Agreement being
18 finalized fair to say that you met with the Defendant on a number of occasions?

19 A That is fair.

20 Q And in regards to you meeting with the Defendant and having
21 discussions with the Defendant was your contact with the Defendant such that he
22 was -- would it be fair to say that he was always anxious to discuss or ask questions
23 or openly discuss particular matters?

24 A Yes.

25 Q Would it be fair to say that he was fairly active in his case?

1 A Very active, yes.

2 Q Now you -- as you were working at the Sgro Law Office I imagine
3 represented many defendants, is that correct?

4 A Criminal?

5 Q Yes.

6 A I don't remember.

7 Q Would it be fair to say that --

8 A Was there more than Mr. Looper? Yes.

9 Q Okay. Would it be fair to say that of the criminal defendants that you
10 had that the Defendant was more of the -- more in the active zone or very involved
11 in his case than maybe other defendants?

12 A Yes.

13 Q Now we talked about the Guilty Plea Agreement. And I'm showing you
14 what's marked as State's Exhibit Number 2 and I ask you is that in fact the Guilty
15 Plea Agreement that we've been discussing?

16 A I believe so.

17 Q Okay. And actually attached to that agreement is a Third Amended
18 Information, would that be accurate?

19 A Correct.

20 Q And that would in fact contain the charges that the Defendant was
21 charged with based upon the Guilty Plea Agreement, is that right, that he ended up
22 pleading to?

23 A Yes.

24 Q Now and I'm also showing you I actually have a separate here just for
25 your identification State's Exhibit Number 3. Would that be essentially the Third

1 Amended Information, same as attached to the Guilty Plea Agreement?

2 A I believe so, yes.

3 Q Okay, and I'm showing you what's marked as State's Exhibit 1 and
4 would that in fact be the Second Amended Information?

5 A Yes.

6 Q Okay, so would that be the charges that the Defendant faced prior to
7 the Guilty Plea Agreement being entered into?

8 A That would be my understanding, yes.

9 Q And finally just for your identification I wanted to show you what's
10 marked as State's Exhibit Number 4 and this in fact a transcript of the proceedings
11 at entry of plea before Your Honor. Do you recognize that as being in fact that -- a
12 transcript of that proceeding?

13 A I have no reason to disagree.

14 Q Okay. Now there was some discussion in regards to the Guilty Plea
15 Agreement, which we're going to talk about in just a minute. You indicated that at
16 some point you got a copy of the Guilty Plea Agreement, that agreement. And you
17 went over to the jail where the Defendant was housed to go over it with him, is that
18 correct?

19 A I believe so, yes.

20 Q Now when you went over there you indicated that you took the file, so
21 all the documents from the file, to make sure the Defendant was completely familiar
22 with the evidence in the case, would that be accurate?

23 A That was my purpose of bringing that, yes.

24 Q Did you also bring copies of his relevant statutes related to the Guilty
25 Plea Agreement and what the Defendant was pleading to?

1 A Yes.

2 Q Now the copies of the statute that you made reference to would those
3 be copies of the statutes also dealing with sex offender registration, lifetime
4 supervision, and a requirement of a psychosexual evaluation before the Defendant
5 would qualify for probation on count 3 or qualify for parole?

6 A I can't recall the statute. I just recalled gathering the file and printing
7 out everything that pertained to the Guilty Plea Agreement, so I would hope.

8 Q So in regards to this talk about the items individually in regards to
9 lifetime supervision. You made reference that you had an extensive conversation
10 with the Defendant in regards to that, is that correct?

11 A We did have a conversation, yes.

12 Q Okay, would it be fair to say that you had the statute in front of you that
13 you could refer to and show him exactly what the requirements of lifetime
14 supervision were?

15 A I can't recall if we did, but in gathering that file I believe that's something
16 I would have done.

17 Q Okay, would it be fair to say that in fact you were familiar with all of the
18 terms of that statute upon you meeting with him and had a thorough discussion in
19 regards to those requirements of that statute?

20 A At the time, yes.

21 Q Would that be a similar situation in regards to sex offender registration?

22 A Yes.

23 Q And in regards to the requirement of a psychosexual evaluation would
24 that be similar?

25 A Yes, you know, I do recall discussing that as well sorry.

1 Q Okay.

2 A Yes.

3 Q So those were all statutes you were familiar with. You might have had
4 even copies with you and you thoroughly discussed those with the Defendant, is that
5 your testimony?

6 A Yes, and I do remember some questions regarding the psychosexual
7 component.

8 Q Okay. Now in regards to the negotiations themselves we have -- you
9 know, and I just took it away from you but let me grab it here. We have a Second
10 Amended and a Third Amended Information which shows the charges that the
11 Defendant had before he entered into the Guilty Plea Agreement. And those
12 charges existed after, is that correct?

13 A Correct.

14 Q Okay, now would it be fair to say that there was in fact a cumulative
15 range prior to negotiation of about 62 years to life imprisonment?

16 A Based off the Second Amended?

17 Q Yes.

18 A I'd have to go through and add it --

19 Q Okay.

20 A -- up, but I would accept those representations.

21 Q Yeah, would you dispute that? It was a pretty heavy penalty, is that
22 correct?

23 A On the Second Amended, yes there was.

24 Q And would it be fair to say that in regards to the Third Amended what
25 the Defendant actually plead to, the range of punishment in that particular case

1 would have been from 4 to 31 years, is that correct?

2 A I don't remember it. I'd have to go through but I could accept the
3 representations.

4 Q So would it be fair to say that there was a somewhat a very disparate, a
5 great benefit to the negotiation that the Defendant received in regards to his
6 exposure to potential prison time?

7 A As compared to the Second and Third, yes.

8 Q Okay. Now the Guilty Plea Agreement itself makes reference to a
9 requirement of sex offender registration, is that correct?

10 A I believe it did, yes.

11 Q And I refer you to page, I believe it's 3 to 4. Would that refresh your
12 recollection to look at that?

13 A Yes.

14 Q And you indicated that you went over that particular agreement
15 specifically with the Defendant and he understood that was a part of the agreement,
16 is that correct?

17 A We went line by line through the entire Guilty Plea Agreement yes, that
18 was included.

19 Q And would it be fair to say that agreement also details the necessity of a
20 psychosexual evaluation prior to the Defendant being eligible for probation on count
21 3 or any parole?

22 A Yes, and I do recall speaking about that with him, yes.

23 Q Okay. And you indicated that during that conversation there at the jail
24 that you also discussed lifetime supervision specifically with the Defendant, is that
25 correct?

1 A I do recall, yes.

2 Q Now actually attached or as part of that Guilty Plea Agreement on I
3 believe page 8, if I could refer you to that, there's actually a certificate that you
4 prepare as an attorney, is that correct?

5 A That is correct.

6 Q And would it be fair to say that in that certification that you indicate that
7 you fully explained to the Defendant the allegations contained and the charges in
8 which he pled guilty?

9 A Yes.

10 Q And that you advised the Defendant of the penalties for each charge
11 including sex offender registration, lifetime supervision requirement, the
12 psychosexual evaluation?

13 A On top of the others, yes.

14 Q And as you're testifying here today you indicate that certification is
15 accurate that you actually did that, is that correct?

16 A Indeed.

17 Q Okay. And you also testified to the fact that the Defendant was
18 competent and he understood the charges and the consequences of his plea and
19 that he -- and you detail that, is that correct?

20 A Correct.

21 Q Was there every any indication as you were having conversations with
22 the Defendant that he wasn't understanding what you were saying or
23 communicating in a reasonable way?

24 A No, all of his questions were appropriate and he seemed to understand.

25 Q Okay. And in fact ultimately the Defendant did sign this Guilty Plea

1 Agreement, is that correct?

2 A That is correct.

3 Q And that signature is on page 7?

4 A Yes.

5 Q And you witnessed him sign that?

6 A Yes.

7 Q And your signature is actually on the certification of counsel on page 8,
8 is that correct?

9 A Yes.

10 Q Now I want to turn your attention to that -- the entry of plea and that was
11 on January 8th 2014 when the Defendant came to court and actually entered his
12 plea of guilty. Do you recall whether or not you were present for that?

13 A Just off the transcript that I reviewed.

14 Q Okay. And do you recall on the day that you came to court this is after
15 the discussion that you've already had with the Defendant at the jail, is that correct?

16 A Yes.

17 Q On the day that you came to court for the entry of plea did you have any
18 further discussion with the Defendant on that day?

19 A You know what I believe we did is I took a copy of the Guilty Plea
20 Agreement to the jail. We discussed it at length. I left it, said think it over. And then
21 looking off the dates of the Guilty Plea Agreement and the dates of the transcript
22 what I believed was hey anything else? You want to go? Let's sign, okay. So aside
23 from just that conversation I don't recall any concerns other than what we had
24 already discussed arising that morning, no.

25 Q Okay. So major things were discussed at that jail and as you came to

1 court you don't recall there being any further clarification or he's just sort of ready to
2 go, would that be your testimony?

3 A That would be my testimony, yes.

4 Q Okay. Now at that time Your Honor did a canvass in the court, is that
5 correct?

6 A Yes.

7 Q Okay. And in the course of that canvass the Defendant was specifically
8 asked or I guess told that a consequences of his plea was requirement to sex
9 offender registration, is that correct? And I refer you to page 5 to refresh your
10 recollection.

11 A Thank you. That is correct.

12 Q And at the time the Defendant indicated that he understood that, is that
13 correct?

14 A Yes, he did.

15 Q At the time that he was having communications with the Court did he
16 indicate to you at all that he had any questions or had any acquiescence in regards
17 to that particular question that was asked by the Court?

18 A I don't recall any discussions amongst while standing before the Judge,
19 no.

20 Q Okay. Did Your Honor also go forward and canvass the Defendant in
21 regards to the necessity of the psychosexual evaluation prior to the Defendant being
22 eligible for probation on Count 3 or prior to any parole being granted. And again I
23 refer you to page 5.

24 THE COURT: It was above the registration discussion.

25 BY MR. SWEETIN:

1 A Yes, thank you.

2 Q And again the Defendant then indicated that he understood that as well,
3 is that correct?

4 A That is correct.

5 Q And just to be clear you indicated that there was no discussion or
6 acquiescence or questions that the Defendant had in regards to that, was that
7 correct?

8 A While standing before the Judge I recall none.

9 Q Okay. And finally there was a discussion in regards to lifetime
10 supervision, is that correct?

11 A Right there on page 5, that is correct.

12 Q Yes, bottom of page 5 going into page 6 I believe.

13 A Yes.

14 Q And at that particular time you were clear with the Court that this case
15 was subject to lifetime supervision, is that correct?

16 A I was clear, yes.

17 Q And in fact you were clear at that point, because you had discussed it
18 with the Defendant previously, is that correct?

19 A That would be correct.

20 Q And the Defendant indicated that he understood that he was subject to
21 lifetime supervision at that particular time, is that correct?

22 A Yes, he did.

23 Q And again the Defendant had no questions for you or any concerns in
24 regards to that particular requirement as he was canvassed here in the courtroom, is
25 that correct?

1 A That would be correct.

2 Q After the entry of plea, the transcript that we made reference of, did you
3 -- do recall having any further contact with the Defendant on that particular day?

4 A Sitting here I have no recollection.

5 Q Okay. You don't recall anything of acquiescence or concern in regards
6 to the Guilty Plea which he had just entered, would that be fair to say?

7 A I believe I would have recalled that, so I do not recall that no.

8 Q Okay. Did you see the Defendant after that particular day after he
9 entered his plea?

10 A I cannot remember.

11 Q Okay, did you participate in the case any further, were you present at
12 sentencing?

13 A I was not present on Mr. Looper's case. I believe I was here on another
14 matter, but I don't know if that was the day that sentencing occurred.

15 Q Did you have any direct contact with the Defendant that you can recall
16 after that particular day of entry of plea?

17 A I cannot recall any, no.

18 Q Do you have any concerns that the Defendant didn't understand
19 everything contained in the Guilty Plea Agreement which we've just made reference
20 to and the guilty plea canvass that we've made reference to as you sit here today
21 based upon your contact with him?

22 A I do not have those concerns, no.

23 MR. SWEETIN: Thanks. Nothing further, Judge.

24 THE COURT: Redirect.

25 **REDIRECT EXAMINATION**

1 BY MR. GAMAGE:

2 Q What sort of questions did he have about the psychosexual evaluation
3 requirement?

4 A I know that there was quite a few, but the one standing out to me today
5 was after we discussed it he wasn't concerned with the process. And he seemed to
6 be confident that it wouldn't be an issue for him.

7 Q And so I'm unclear, because I'm not sure which psychosexual
8 evaluation process we're talking about. Did he ask questions about the one that the
9 Court would impose related to -- prior to sentencing or discuss or request prior to
10 sentencing or did he discuss the psychosexual evaluation for purposes of trying to
11 get off of parole and probation at a later date?

12 A I remember we had both of those discussions, because I thought
13 something was happening before sentencing regarding an independent one. I -- oh
14 man, I know there were two and I know in discussing the Guilty Plea Agreement we
15 focused on the one that he would be canvassed on and the implications it would
16 have. And I just remember after having that discussion he said -- what he said,
17 yes?

18 THE COURT: Yep.

19 BY MR. GAMAGE:

20 A He said that it wasn't going to concern him because it wouldn't be a
21 problem for him.

22 Q But again that was for the psychosexual evaluation related to
23 sentencing, correct?

24 A That was the psychosexual evaluation as discussed in the Guilty Plea
25 Agreement. We just focused on the Guilty Plea Agreement.

1 Q Again yes I know what you focused on. I'm asking you this is all in
2 relation to the sentencing not 15 years down the road that he would have to take a
3 psychosexual or have an evaluation for purposes of getting off registration
4 requirements or getting off of supervision. Do you understand the difference?

5 THE COURT: I'm confused about what you're asking about. Are you talking
6 about the --

7 MR. GAMAGE: Judge, it's my understanding --

8 THE COURT: Hold on. There's a psychosexual evaluation needed to get
9 released on parole. If there's some psychosexual evaluation to get off supervision
10 I'm unaware of it and I don't think that's discussed in here.

11 MR. GAMAGE: Well it's discussed in my pleading --

12 THE COURT: Okay.

13 MR. GAMAGE: -- in my petition.

14 THE COURT: Okay, so just --I guess-- I mean, you can ask about any of
15 those --

16 MR. GAMAGE: Yeah.

17 THE COURT: -- just be clear what you're asking about.

18 MR. GAMAGE: And that's what's kind of -- because I was confused that's
19 why I'm asking for specifics so --

20 THE COURT: Go ahead.

21 MR. GAMAGE: So I'm just asking -- it's my understanding that there's going -
22 - there's mental health -- there were mental health evaluation requirements related
23 to sentencing that were done, is that correct, of Mr. Looper?

24 THE COURT: Are --

25 BY MR. GAMAGE:

1 Q Okay, was there a psychological evaluation done of Mr. Looper related
2 to sentencing?

3 A I don't recall one. I don't know.

4 Q Okay.

5 A I don't know if I was around. I don't know if there was, I'm sorry.

6 Q Okay, so what psychosexual evaluation were you talking about with Mr.
7 Looper when he asked questions? What was the purpose of that psychosexual
8 evaluation? What was your understanding of what he was asking you?

9 A It was a long time ago, my goodness. It was the one that was
10 contained in the Guilty Plea Agreement and how that would affect his sentencing.
11 And can I see the Guilty Plea Agreement again?

12 MR. GAMAGE: May I approach, Judge?

13 THE COURT: Yeah.

14 BY MR. GAMAGE:

15 A Okay, so yes the statute was in there. I would have certainly printed
16 that out and brought that with me as to count 3 on page 3. And, I mean, the
17 Psychosexual Evaluation is part of the Division's Presentence Investigation Report.
18 And the probation unless Psychosexual Evaluation certifies we would have
19 individually discussed all of that.

20 Q Okay, so you were relating to the requirements of a recommendation of
21 probation or a suspension of sentence, that issue. That's what you were discussing
22 the psychosexual evaluation for?

23 MR. SWEETIN: I think -- I don't think that that's what she said. I think that's -
24 -

25 BY MR. GAMAGE:

1 Q Okay, well then were -- you were discussing the Psychosexual
2 Evaluation for purposes of what is written on page 3, which is page PA016 of my
3 appendix.

4 A Okay, but your question was what did I discuss?

5 Q No, I'm just saying the purpose of his questions were in relation to
6 these last two paragraphs of the page 3 of the Guilty Plea Agreement.

7 A I don't remember the purpose of this. The only thing I remember is
8 what I've told you and that was just what I've already told you. And that was just
9 what I've already said. I'm sorry.

10 Q My confusion unfortunately is I don't understand what you've told me.
11 And I'm not trying to be difficult. I'm trying to understand what -- in what context he
12 was asking about a psychological evaluation or a psychosexual evaluation in what
13 context for purpose was he asking that question? And it seems like you said it was
14 related to this Guilty Plea Agreement. And I'm asking you if the two paragraphs of
15 page 3 was the reason that gave rise to his questions about a psychosexual
16 evaluation.

17 A And I don't intend to be difficult either. I'm sorry. I just remember that
18 we discussed a psychosexual evaluation.

19 Q Okay.

20 A And that he did have some concerns as to what the basis of his
21 concerns were I don't recall and --

22 Q Fair enough then. Okay, I see what you're saying now. So it was just a
23 generalized discussion of psychosexual evaluation. And you're not really -- you
24 don't really recall whether or not it was related to sentencing consequences or
25 issues that may arise coming up to sentencing.

1 MR. SWEETIN: Well that misstates the testimony.

2 BY MR. GAMAGE:

3 A Yeah, no I would have discussed it and to the extent on how it would
4 have affected him at sentencing.

5 Q Okay, at sentencing. Thank you, Your Honor.

6 THE COURT: Cross.

7 **RECROSS-EXAMINATION**

8 BY MR. SWEETIN:

9 Q I just -- previously you testified in regards to the Guilty Plea Agreement,
10 which I think you still have before you that you went through it line by line with the
11 Defendant, is that correct?

12 A Yes.

13 Q Now first I want you to look at the bottom of page 3 of that agreement.

14 A Okay.

15 Q Okay, and that makes reference to the psychosexual evaluation as it
16 relates to sentencing, is that correct?

17 A Yes, that's --

18 Q And you indicated you had gone through that line by line, is that
19 correct?

20 A That is correct.

21 Q And if you turn the page at the top of page 4 it makes reference the
22 psychosexual evaluation or a mental health evaluation that's done before the
23 Defendant's eligible for parole. Would you have gone through that line by line with
24 the Defendant as well?

25 A You know, I'm sorry, like I said I haven't really spent a lot of time

1 reviewing this. This may be where he was not concerned, top of page 4.

2 Q Okay. So you remember specifically going through that line by line with
3 the Defendant then?

4 A I know we went through line by line of this and I do recall having some
5 conversations about it and his questions. And I just don't remember if it was the
6 bottom of page 3 or top of page 4, but yes we did discuss it.

7 Q Thank you. Nothing further.

8 A Nothing further, Judge.

9 **FURTHER QUESTIONING**

10 BY THE COURT:

11 Q So is it fair to say you weren't expecting he was going to get probation
12 when he came in for sentencing?

13 A Correct, that was not my expectation.

14 Q Okay, you never told him though, you know, if you come in as a low risk
15 to reoffend you're going to get probation?

16 A Absolutely not, Your Honor.

17 Q Okay. So at the beginning of your testimony you said you were
18 licensed as an attorney May of 2013, correct?

19 A I believe so, yes, Your Honor.

20 Q That's correct?

21 A Yes it is.

22 Q Okay, and then this entry of plea.

23 A I was admitted. I don't remember when I swore, around that time yes.

24 Q Around, okay. Around that time in 2013?

25 A Yes.

1 Q Fair enough. The entry of plea with Mr. Looper was in January of 2104
2 so it's maybe 6, 7 months later or something in that neighborhood, correct?

3 A Yes, Your Honor.

4 Q When did you start working at the Sgro Office?

5 A I believe it wasn't that long after becoming an attorney.

6 Q So sometime mid-2013?

7 A I believe it was still summer, yes.

8 Q Okay, and did you do any criminal defense work I guess even as a law
9 clerk before that?

10 A Yes, Your Honor, I was with the Public Defender's here for a while.

11 Q Okay, and -- so as a clerk rather than as an attorney?

12 A I was a certified law student.

13 Q I see. Okay, had you -- in that role with the Public Defender's Office
14 had you done any sex offense cases?

15 A You know, I do not recall. I wasn't on the sex team, but I don't know if
16 any of the lower ones came to the track. I don't recall.

17 Q And then during the time up until January 2014 when you represented
18 Mr. Looper at this entry of plea, had you been involved in other sex offense cases in
19 your work at Mr. Sgro's Office?

20 A I do not recall, but I want to say no.

21 Q Okay. And so knowing that you hadn't done any other did you take
22 some extra time reviewing the statutes on this?

23 A Certainly yes and I spent a lot of time with Mr. Sgro.

24 Q I was going to ask that next. So before the -- was it you that had the
25 communications with the DA's Office about what offers were to be extended or -- the

1 negotiations did -- sorry, let me start over. Were you the one who participated in the
2 negotiations with the District Attorney's Office?

3 A I can't remember if they started before, but I certainly did communicate
4 with Ms. Fleck while I was there, yes, Your Honor.

5 Q So you were directly communicating with her. It wasn't all going
6 through Mr. Sgro?

7 A Correct.

8 Q Okay, but when offers -- when a -- let me be specific. When the offer
9 was made that was ultimately accepted by Mr. Looper did you discuss that offer with
10 Mr. Sgro?

11 A Everything was discussed with Mr. Sgro, yes.

12 Q Okay, and did he participate in meetings with Mr. Looper about the
13 Guilty Plea?

14 A I remember Mr. Sgro coming to jail with me on a -- I remember that. I
15 don't remember the conversation at that time. I just remember him being there.
16 And I do remember Mr. Sgro coming to court for some hearings and meeting with
17 him and I just don't remember what they discussed, I'm sorry.

18 Q And so this entry of plea was January 8th of 2014 and Mr. Looper was
19 eventually sentenced on April 28, 2014, a little over three months later. I'm just
20 looking at the Court record. Are you saying you had left the Sgro firm in between
21 those two dates?

22 A Yes, I don't remember the date I left. But I remember being in here on
23 another matter and there was a little disruption and I looked up and said oh that's
24 Mr. Looper's case. And I don't remember if it was for sentencing or for what, but I
25 just remember that something had not been concluded by that time.

1 Q But did your leaving the Sgro Firm have anything to do with your
2 representation of Mr. Looper on this case?

3 A No, no.

4 Q Okay. And have you done criminal defense work since leaving the
5 Sgro Firm?

6 A Not really, I transitioned to civil practice pretty quickly after. And --

7 Q Got it.

8 A -- now I'm just medical malpractice so.

9 Q Okay, alright. And I'll -- the Guilty Plea Agreement, although the Guilty
10 Plea Agreement itself doesn't seem to have a discussion about lifetime supervision
11 it's your recollection that you had spoken to Mr. Looper about that in contemplating
12 this plea deal, is that true?

13 A The lifetime supervision -- I remember that from the transcript when I
14 reviewed that. So yes we did discuss that at length, Your Honor.

15 Q Right, so you responded to my question about lifetime supervision at
16 the time of entry of plea and said that was part of the negotiations. So fair to say
17 you wouldn't have said that unless you had previously discussed that issue?

18 A Yes, Your Honor.

19 Q Any follow-up?

20 MR. GAMAGE: May I follow-up, Judge?

21 THE COURT: Sure.

22 FOLLOW-UP QUESTIONS

23 BY MR. GAMAGE:

24 Q You just testified to the question of discussing a lifetime supervision
25 issue. And you said that you remember discussing that because you read it in the

1 transcript.

2 A It refreshed my recollection, yes.

3 Q So are you saying just for clarification that you discussed it with him
4 because the issue came up at sentencing and you discussed it with him at counsel
5 table?

6 A No, I discussed that at the time of the jail and I remember when we
7 were being canvassed by the Court after reviewing the transcript. I had no
8 independent recollection of it. After reviewing there was a confirmation that we're --
9 I believe the Judge said this is a lifetime and I said absolutely or something. Yes.
10 And that's because of my prior conversations with Mr. Looper at the jail.

11 Q Okay. Thank you. Nothing further.

12 THE COURT: Anything further?

13 MR. SWEETIN: No, Your Honor.

14 THE COURT: Alright, thank you for your time. I appreciate you coming down
15 today.

16 THE WITNESS: Did you want me to leave the exhibits here?

17 THE COURT: Yes, please. Don't take it with you.

18 Alright, so are you calling any other witnesses?

19 MR. GAMAGE: Judge, I would like to take a break --

20 THE COURT: Yeah.

21 MR. GAMAGE: -- at this moment to discuss with my client his rights. And
22 then I --

23 THE COURT: Okay.

24 MR. GAMAGE: -- will come back for your canvass and then we'll go from
25 there.

1 MR. SWEETIN: Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: Alright, let's take a short break then.

4 THE MARSHAL: All rise. Court is in recess.

5 [Court in recess at 3:21 p.m.]

6 [Court resumed at 3:29 p.m.]

7 THE MARSHAL: Department VI is back in session. Please be seated, come
8 to order.

9 MR. GAMAGE: Good afternoon, Your Honor, I've had a moment to discuss
10 with my client his rights relating to testifying today or not testifying today. Based
11 upon my discussion of his constitutional rights, based upon my discussion of the
12 potential consequences, he's elected to provide testimony today in support of his
13 writ of habeas corpus.

14 THE COURT: Alright so, Mr. Looper, you understand that your testimony can
15 be used in any other future court proceeding, correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Okay, and of course you're not required to testify but you can
18 choose to testify you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay, and you do want to testify today?

21 THE DEFENDANT: Yeah.

22 THE COURT: Alright, so we'll just have him testify right there at table. You
23 might want to pull over the mic --

24 MR. GAMAGE: Yes, Judge.

25 THE COURT: -- if you can get a little closer. Okay, go ahead and swear --

1 THE MARSHAL: Just do me a favor real quick, stand up.

2 THE COURT: Yeah, have him stand to be sworn.

3 THE MARSHAL: Raise your right hand as best you can and face that young
4 lady right there.

5 **DUJUAN LOOPER**

6 [having been called as a witness and being first duly sworn, testified as
7 follows:]

8 THE CLERK: Thank you. Please be seated. Can you please state your full
9 name, spelling your first and last name for the record?

10 THE WITNESS: Dajuan Don Looper. D-U-J-U-A-N, L-O-O-P-E-R.

11 MR. GAMAGE: May I begin, Judge?

12 THE COURT: Yes.

13 **DIRECT EXAMINATION**

14 BY MR. GAMAGE:

15 Q Good afternoon, Mr. Looper, obviously you know why you were here
16 today. I represent you in relation to your writ of habeas corpus and I filed a
17 supplement in support of that. We're going to discuss today your testimony and
18 your understanding regarding the issues related to the negotiations and the eventual
19 entry into the Guilty Plea Agreement in this case, do you understand that?

20 A Yes.

21 Q Now on or about January of 2014 a Guilty Plea Agreement was signed
22 in this case. Is that about correct, according to your recollection?

23 A Yes.

24 Q Now during the process of the investigation and the eventual
25 negotiation of your case was a -- Ms. Weaver who's testified today part of the legal

1 team that represented you?

2 A Yes.

3 Q Okay, was a Ms. Barbeau also part of legal team that represented you?

4 A Yes.

5 Q Okay, and did Ms. Barbeau come first for purposes of that
6 representation?

7 A No, I seen Ms. Weaver first with Kevin Leik.

8 Q Okay.

9 A Then there was PD Cortez. I think I'm saying that right. And then came
10 Marjorie.

11 Q Okay. How often did Mr. Sgro appear with any of these attorneys to
12 talk with you?

13 A I've seen Sgro one time at the jail and one time inside of the courtroom
14 to argue a motion.

15 Q Okay. Alright during the course of the case against you related to the
16 Guilty Plea Agreement what was your intention for the majority of the time as to
17 whether or not you wanted to go to trial or not?

18 A I wanted to go.

19 Q And you wanted to go to trial because why?

20 A The evidence was -- the evidence wasn't -- how do you say that? It
21 wasn't strong. It just -- it was a made up situation.

22 Q Okay, so it was your contention that the allegations against you weren't
23 backed by strong evidence, is that a fair statement?

24 A Yes.

25 Q Okay. As to the strength of that evidence what were your thoughts

1 about or were -- did you have discussions with your attorney about the State's DNA
2 evidence for example?

3 A Yes, they didn't -- they couldn't produce any DNA because there was
4 no DNA to be produced. And --

5 Q What about any drug substances? Was there any testing that was
6 produced by the District Attorney's Office related the case?

7 A There was no -- they said that they -- my ex said that I've been known
8 to have GHB and she think that I gave her daughter some GHB. There was never --
9 nothing of me giving anybody GHB. They did a blood test. Nothing came back.
10 They tested the cups no GHB and nothing came back. It was just untrue.

11 Q Okay, and so that is the -- that is what you were understood to -- strike
12 that. That is what you were told by your attorney was the evidence against you at
13 that time, correct?

14 A Yes.

15 Q Okay, was there any sort of pictures or depictions of you that identified
16 you as doing any of the conduct that was alleged in the case?

17 A No, I have scars on my right hand. The picture that they showed it was
18 a hand. I have scars on my hand from boxing all my life. It show no scars on there.

19 Q Now the particular picture that was discussed by the District Attorney
20 during prior testimony related to being in the Cloud or not in the Cloud. What is your
21 understanding of how the evidence was retrieved and presented as told to you by
22 your attorneys?

23 A They never got this picture off my phone. They got it off -- they got it
24 out of the iCloud when the -- they asked who iPad this is and my ex said: "Oh it's
25 my iPad". It was her -- the only thing --

1 Q What was her name?

2 A Charlotte.

3 Q Okay.

4 A The iTunes account was in my name because you only have one
5 iTunes account for the whole house. That's what was in my name. That was what
6 was mine.

7 Q Okay. Now at some point in time Ms. Barbeau apparently came to you
8 and advised you that the District Attorneys had made an offer, is that correct?

9 A Yes.

10 Q Did she state to you or give an opinion to you as to whether or not she
11 thought it was a good or bad offer?

12 A She came -- she told me it was good. She told me that if I take this
13 deal I'll be looking at a 2 with a 1 to something and then another one ran concurrent.
14 And if I take this I can get back out, get back to my career because I was trying -- I
15 was eager. If this was the deal I said: Okay, I'll do this. I'll take this deal because I
16 was trying to get out to go to Rio to try and fight in Olympic Games. That's the only
17 reason that I took the deal. And I wouldn't have signed a lifetime anything or
18 anything with life in it. I just want to make that clear. And that was nowhere inside --
19 it was nowhere inside of the deal and --

20 Q You're -- okay, just one second. Let me get to that and I'll ask
21 questions about that specifically for you.

22 A Okay.

23 Q Okay, so Ms. Barbeau has discussed during her testimony as you were
24 here that there was a rather long meeting that occurred at the jail with her and you.
25 Was there anyone else present during that meeting?

1 A No, and that meeting it just consisted of me telling her different things of
2 well we should have checked this or we should have checked that. It was -- that's
3 pretty much just what the meeting was.

4 Q Did -- Ms. Barbeau testified that you were handed the file and you were
5 allowed to look through all of the evidence in your case, is that true?

6 A She gave me -- she came with the paperwork. She said this is
7 everything. She read the deal and said okay this is what it is and you know you'll be
8 getting this. You'll be getting this. And it sounded good to me. I said I will be
9 getting a 2. I believe she said, what was it, like a 2 to 10 and a 1 to 5 and a 1 to
10 something else. And it'd be ran concurrent. And I said: Okay, let's do it.

11 Q Okay, did you discuss with her the concepts of registration as a sex
12 offender?

13 A I asked her about the registration and I knew that was for -- that you
14 have to register for life. But I was told that if you went back to your home state or
15 wherever you were from if you registered then you didn't have to register if that's
16 where you was born from. But it turned out that that wasn't true, but that's what I
17 was asking her about. Those were the questions that I was asking her as far as
18 that.

19 Q And you were asking her those questions because genuinely that's
20 what your attorney was there for, correct, --

21 A Yes.

22 Q -- to answer the legal issues before you on this case.

23 A Yes.

24 Q Okay, did you ask her questions or did she discuss with you the
25 potential for lifetime supervision?

1 A We never -- we didn't go over the lifetime supervision. We just -- it was
2 just all about the registration.

3 Q Okay, I see. Did she discuss with you the fact -- the kind of the mistake
4 that I made at the podium that she did not discuss them as separate issues?

5 A Well, --

6 Q Do you understand my question?

7 A Yeah, that it could have -- if she did it could have lapped into me
8 registering. I knew that that's what I was under the impression of me registering for
9 life. I understood that part. But as far as me being on the supervision or anything
10 like that I would have never signed to anything like that or never done it. I don't
11 know.

12 Q What is your belief related to the consequences that would occur to you
13 and your boxing career if you had a lifetime supervision requirement?

14 A It's a -- it would be pretty rough, because it's kids inside of the gym. It's
15 -- everywhere you go to travel to fight to compete there's kids.

16 Q Do you think any sanctioning authorities would have allowed you to box
17 professionally based upon you having a lifetime supervision requirement? And at
18 the time was that a concern of yours?

19 A Well boxing is a dirty business. I don't think that it would have mattered
20 too much. But as far as sponsors go it would have hurt me in that aspect.

21 Q Fair enough. At the time of the change of plea hearing what was your
22 understanding as to what the requirements were for purposes of registration and for
23 lifetime supervision?

24 A Well I -- well like I said just registering I thought -- I knew I had to
25 register. And registering meant that, you know, when you get out you have to go

1 register. You can pop up on a -- on the website --

2 Q Uh-huh.

3 A -- or people may get a picture or something of you as you move into a
4 neighborhood. That's what I took that for.

5 Q Okay, were you ever told that you would have to report to someone or
6 that someone could come in and inspect your home or things like that?

7 A No.

8 Q Okay, were you told that a consequence of your plea would be that you
9 were not allowed to go to places that were primarily designed or out there for, you
10 know, children's use?

11 A No.

12 Q Now so you did not understand that a lifetime supervision requirement
13 existed at that time of change of plea. Now do you recall that the Judge brought that
14 issue up during the hearing?

15 A I heard it and I -- and like before I was just under the impression of me -
16 - I would have said something. I didn't think it was supervision as far as someone
17 having to come and check up on me. I thought it was -- it retained to the registering
18 thing, registering for life.

19 Q Okay. And prior to you -- your case being called in court and you
20 standing up, did Ms. Barbeau or your attorney just tell you how to act when the
21 Judge asked you questions?

22 A She just told me to play nice and just say yes to everything that the
23 Judge said.

24 Q Okay. Now for purposes of the sentencing, when you got to the
25 sentencing, what was your understanding as to whether or not you would get

1 lifetime supervision? Had that been explained to you by that time?

2 A No.

3 MR. GAMAGE: Okay. Pass the witness, Judge.

4 THE COURT: Cross.

5 **CROSS-EXAMINATION**

6 BY MR. SWEETIN:

7 Q Mr. Looper, you indicated that you received the Guilty Plea Agreement,
8 is that correct?

9 A I didn't have one of my own, not until sentencing when I first -- when the
10 agreement came Marjorie had it. She had me sign it and she took it with her. So I
11 didn't have a copy just of my own until --

12 Q Let me ask you this. You mentioned Marjorie. That's the attorney who
13 testified last, is that correct?

14 A Yes.

15 Q Did there come a point in time when she came over to the jail to discuss
16 with you the Guilty Plea Agreement?

17 A Yes.

18 Q And when she came to the jail she brought with her a Guilty Plea
19 Agreement, is that correct?

20 A Yes.

21 Q And she went through that entire Guilty Plea Agreement with you,
22 would that be fair to say?

23 A Yes, she was reading through things, skimming through it.

24 Q And while she was doing that were you able to ask her any questions
25 that she might have?